

EXHIBIT G

VIDEO DEPOSITION
LAUREN McDERMOTT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

1 Video deposition of **LAUREN McDERMOTT**,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 19, 2020, commencing at
6 10:07 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8

9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By R. ANTHONY RUPP, III, ESQ.,
12 rupp@ruppbaase.com and
13 CHAD DAVENPORT, ESQ.,
14 davenport@ruppbaase.com,
15 1600 Liberty Building,
16 Buffalo, New York 14202,
17 (716) 854-3400,
18 Appearing for the Plaintiff.

19

20 TIMOTHY A. BALL, ESQ.,
21 Corporation Counsel,
22 By MAEVE E. HUGGINS, ESQ.,
23 Assistant Corporation Counsel,
24 1137 City Hall,
25 Buffalo, New York 14202,
26 (716) 851-4334,
27 mhuggins@city-buffalo.com,
28 Appearing for the Defendants.

29

30 PRESENT: JAMES KISTNER
31 JENNY VELEZ
32 PATRICK F. MORRIS, Videographer
33

10:04:28

10:04:28 1 **THE REPORTER:** Usual stipulations for

10:04:53 2 federal cases and read and sign?

10:04:56 3 **MS. HUGGINS:** 45 days to read and sign.

10:04:58 4 **THE REPORTER:** Okay.

10:05:00 5 **MR. RUPP:** No objection.

10:05:00 6 **THE REPORTER:** And Ms. Huggins will be

10:05:02 7 supplied?

10:05:04 8 **MR. RUPP:** Yes.

10:05:04 9 **THE REPORTER:** Thank you.

10:05:04 10

10:07:49 11 **L A U R E N M c D E R M O T T**, 1847 South Park
10:07:58 12 Avenue, Buffalo, New York 14220, after being duly
10:07:58 13 called and sworn, testified as follows:

10:08:02 14

10:08:02 15 **EXAMINATION BY MR. RUPP:**

10:08:02 16

10:08:03 17 **Q.** Good morning, Ms. McDermott.

10:08:05 18 **A.** Good morning.

10:08:05 19 **Q.** My name's Tony Rupp. I don't think
10:08:07 20 we've met before today. Is that fair?

10:08:08 21 **A.** Yeah, I don't think so.

10:08:09 22 **Q.** Okay. You're here for a deposition in
10:08:11 23 the case of James Kistner versus the City of

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10:15:37 1 page?

10:15:38 2 **A.** Yes.

10:15:38 3 **Q.** But, in fact, you had already graduated
10:15:41 4 from the ECC program by the time the training
10:15:45 5 that's listed on this begins; is that right?

10:15:48 6 **A.** Yes.

10:15:48 7 **Q.** Okay. So is the training that you
10:15:51 8 receive once you become an actual officer in the
10:15:55 9 field given through something known as the Buffalo
10:15:58 10 Police Academy?

10:15:59 11 **A.** Yes. We have -- there's ECC Training
10:16:01 12 Academy and then there's a Buffalo Police Academy
10:16:05 13 Division.

10:16:05 14 **Q.** Okay.

10:16:05 15 **A.** And that's where -- what all of this
10:16:07 16 would be.

10:16:07 17 **Q.** All right. So let's just pick the one
10:16:09 18 at the top. 2013 Glock qualification, which took
10:16:12 19 place on January 22nd, 2013, which was after ECC;
10:16:16 20 is that right?

10:16:17 21 **A.** Yes.

10:16:17 22 **Q.** Indicates that you took and completed
10:16:18 23 that course; is that right?

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10:16:19 1 **A.** Yes.

10:16:20 2 **Q.** And was that something that would
10:16:23 3 happen, you know, during a regularly scheduled
10:16:26 4 shift that you would be scheduled to go to the
10:16:28 5 police academy to do that?

10:16:29 6 **A.** It depends. Glock qualification is
10:16:33 7 qualifying with our firearm.

10:16:34 8 **Q.** Right.

10:16:35 9 **A.** So it would be during -- it would be at
10:16:37 10 the range. So, generally, it would be during the
10:16:38 11 shift but not necessarily.

10:16:42 12 **Q.** Okay. So I guess what I'm getting at
10:16:44 13 is: Was this training in addition to like your
10:16:46 14 regular, I assume, eight-hour shift or --

10:16:48 15 **A.** Ten-hour shifts.

10:16:49 16 **Q.** -- ten-hour shift, or could it
10:16:51 17 happen -- mostly happen during your shift?

10:16:53 18 **A.** It -- it is usually during the shift.

10:16:55 19 **Q.** Okay. And so the list of courses that
10:17:00 20 you took at ECC are not on here; is that right?

10:17:03 21 **A.** Correct.

10:17:03 22 **Q.** So if we wanted to see those, we would
10:17:05 23 have to get those records; is that right?

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10:17:09 1 **A.** Yes.

10:17:09 2 **Q.** Okay. But with respect to the training
10:17:12 3 that you've received through the Buffalo Police
10:17:18 4 Academy postECC, does this appear to be a full
10:17:23 5 listing of your training at least through the
10:17:27 6 date -- the last date that's referenced there,
10:17:30 7 February 20, 2019?

10:17:33 8 **A.** Yes.

10:17:33 9 **Q.** Okay. And I note that you took
10:17:36 10 training -- there's training listed here for Tahoe
10:17:41 11 on May 2, 2014. What is that training?

10:17:45 12 **A.** We had previously had Crown Vics, and
10:17:48 13 we had just gotten a fleet of Tahoes, so we all had
10:17:52 14 to be trained on driving those Tahoes.

10:17:54 15 **Q.** All right. And you received that
10:17:56 16 training on May 2nd of 2014?

10:17:58 17 **A.** Yes.

10:17:59 18 **Q.** And completed that course?

10:18:01 19 **A.** Yes.

10:18:01 20 **Q.** And that was a four-hour course?

10:18:02 21 **A.** Yes.

10:18:02 22 **Q.** All right. And on the date of the
10:18:04 23 incident involving Mr. Kistner, January 1st, 2017,

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10:18:09 1 were you driving a Tahoe?

10:18:10 2 **A.** Yes.

10:18:10 3 **Q.** All right. And was that the same type
10:18:11 4 or model of Tahoe that you had trained on back in
10:18:16 5 2014?

10:18:16 6 **A.** I believe so.

10:18:17 7 **Q.** All right. And did you take any other
10:18:19 8 training on the operation -- the safe and lawful
10:18:22 9 operation of a Tahoe after May of 2014 and before
10:18:29 10 January 1st of 2017?

10:18:32 11 **A.** I don't remember.

10:18:33 12 **Q.** Okay. Well, if you had, would it be
10:18:35 13 referenced on the Buffalo Police Academy training
10:18:38 14 record that's been marked as Exhibit 14?

10:18:40 15 **A.** I believe so.

10:18:40 16 **Q.** Okay. Do you see anything there that
10:18:43 17 references either Tahoe in particular or any type
10:18:46 18 of driving training that you would have taken
10:18:51 19 between those two dates that I just gave you?

10:18:53 20 **A.** I do not.

10:18:54 21 **Q.** Okay. And are there any other
10:18:55 22 references to any type of driver training anywhere
10:18:59 23 on Exhibit 14 that you can see?

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10:19:10 1 **A.** Not that I can see.

10:19:11 2 **Q.** All right. Did you take driver

10:19:12 3 training operating a police -- a patrol vehicle

10:19:17 4 while you were at the ECC program?

10:19:18 5 **A.** Yes.

10:19:18 6 **Q.** Okay. And what type of vehicles did

10:19:20 7 you train on there? Were those the Crown Vics?

10:19:22 8 **A.** Yes.

10:19:23 9 **Q.** Okay. And when do -- did the Tahoes

10:19:29 10 first come into the police department where you

10:19:31 11 would have been at C District to either ride in one

10:19:33 12 or operate one?

10:19:33 13 **A.** I don't know the exact date.

10:19:35 14 **Q.** Did you start to drive one before you

10:19:37 15 had the Tahoe training, or was that required before

10:19:39 16 you could operate the Tahoe?

10:19:40 17 **A.** I don't remember.

10:19:41 18 **Q.** Okay. All right. And since -- since

10:19:49 19 2014, you haven't had any updated course -- courses

10:19:53 20 on operation of a patrol vehicle, to the best of

10:19:56 21 your knowledge?

10:19:57 22 **A.** To the best of my knowledge, no.

10:19:59 23 **Q.** Okay. Fair enough.

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10:20:01 1 And, now, I see there's a reference, on the
10:20:05 2 second page of Exhibit 14, August 4, 2016, to law
10:20:09 3 enforcement and mental health. Was that a
10:20:12 4 three-hour course that you took on that date?

10:20:14 5 **A.** Yes.

10:20:14 6 **Q.** And you completed it?

10:20:16 7 **A.** Yes.

10:20:16 8 **Q.** All right. And had you also taken
10:20:18 9 a similar course as part of your ECC training?

10:20:22 10 **A.** Yes. I just don't know what it was
10:20:24 11 called.

10:20:24 12 **Q.** Sure.

10:20:26 13 Do you see anything else on the list of
10:20:30 14 training courses that's marked as Exhibit 14 from
10:20:34 15 the Buffalo Police Academy that relates to law
10:20:38 16 enforcement and mental health or just the mental
10:20:41 17 health part of it?

10:20:42 18 **MS. HUGGINS:** Form. You can answer.

10:20:43 19 **THE WITNESS:** I took CIT crisis services
10:20:47 20 training in December of '18.

10:20:48 21 **BY MR. RUPP:**

10:20:49 22 **Q.** And what is CIT?

10:20:50 23 **A.** It is -- gosh. I'm drawing a blank.

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10:29:25 1 How was it that you were paired up with --

10:29:28 2 with Officer Velez?

10:29:30 3 **THE WITNESS:** By choice.

10:29:30 4 **BY MR. RUPP:**

10:29:30 5 Q. Okay. You got to pick?

10:29:31 6 A. Yes.

10:29:31 7 Q. Was there any effort to match, you
10:29:34 8 know, lesser experienced officers with more
10:29:36 9 experienced officers when you --

10:29:37 10 A. No.

10:29:37 11 Q. -- doubled up like that?

10:29:38 12 A. No.

10:29:39 13 Q. Okay. And how was it that you and
10:29:41 14 Officer Velez -- I assume it was mutual -- chose
10:29:43 15 each other?

10:29:45 16 A. We were friends. I mean --

10:29:48 17 Q. Did you become -- were you friends
10:29:49 18 before you joined the police department or --

10:29:51 19 A. No. We met on the job.

10:29:52 20 Q. Okay. And do you remain friends with
10:29:56 21 her to this day?

10:29:56 22 A. Yes.

10:29:57 23 Q. All right. And do you still -- you're

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10:29:58 1 a detective now, so you're not riding patrol.

10:30:01 2 **A.** Correct.

10:30:01 3 **Q.** Okay. As is Ms. Velez?

10:30:05 4 **A.** She's a lieutenant.

10:30:06 5 **Q.** She's a lieutenant now. Okay. So you
10:30:07 6 don't ride together anymore.

10:30:10 7 **A.** Correct.

10:30:11 8 **Q.** Okay. And you're still with -- with
10:30:13 9 C District?

10:30:14 10 **A.** A District.

10:30:15 11 **Q.** I'm sorry. A District is where you are
10:30:17 12 now.

10:30:19 13 Is she -- what district is she with now?

10:30:21 14 **A.** C.

10:30:21 15 **Q.** Okay. She remained with C.

10:30:24 16 All right. Prior to your deposition here
10:30:33 17 today, Ms. McDermott, did you review any
10:30:34 18 documentation at all?

10:30:35 19 **A.** Yes.

10:30:35 20 **Q.** All right. What did you review?

10:30:39 21 **A.** There's a lot of documents that we
10:30:41 22 reviewed.

10:30:42 23 **Q.** When did you do that review?

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10:30:43 1 **A.** Yesterday.

10:30:44 2 **Q.** Okay. And how long -- where did that

10:30:46 3 take place?

10:30:47 4 **A.** Maeve's office.

10:30:49 5 **Q.** Okay. And approximately how long did

10:30:51 6 you -- did your review of documents take place?

10:30:54 7 **A.** A couple hours.

10:30:55 8 **Q.** Okay. And -- and what in particular

10:30:59 9 did you review?

10:31:00 10 Did you review any documents that you signed

10:31:01 11 or arrest records relative to the incident

10:31:05 12 involving Mr. Kistner?

10:31:06 13 **A.** Yes. We reviewed the arrest records.

10:31:08 14 **Q.** Okay. What else did you review?

10:31:10 15 **A.** Video.

10:31:11 16 **Q.** All right. Is that video --

10:31:13 17 surveillance video of the incident?

10:31:14 18 **A.** Yes.

10:31:14 19 **Q.** That was produced by our office?

10:31:16 20 **A.** Yes.

10:31:16 21 **Q.** Okay. Had you seen that previously?

10:31:18 22 **A.** Yes.

10:31:18 23 **Q.** And when -- when is the first time you

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10:31:21 1 had seen that surveillance video?

10:31:24 2 **A.** I believe it was after we were served
10:31:28 3 with the -- or I was served with the paperwork for
10:31:30 4 the lawsuit.

10:31:33 5 **Q.** At any time prior to being served with
10:31:35 6 the lawsuit, had you been contacted by anyone from
10:31:39 7 internal affairs at the Buffalo Police Department?

10:31:42 8 **A.** No.

10:31:44 9 **Q.** Are -- were you ever aware of any
10:31:47 10 internal affairs investigations --

10:31:48 11 **A.** Excuse me.

10:31:49 12 **Q.** -- relative to the arrest of
10:31:51 13 Mr. Kistner on -- and the episode on January 1 of
10:31:56 14 2017?

10:31:56 15 **A.** No.

10:31:57 16 **Q.** Are you aware of one now?

10:31:58 17 **A.** No.

10:31:58 18 **Q.** Have you ever been contacted by
10:32:01 19 internal affairs?

10:32:02 20 **A.** No.

10:32:02 21 **Q.** Okay. And you're not -- you're not
10:32:05 22 aware of whether they have an open investigation
10:32:07 23 or -- or have never opened one at this time.

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10:32:09 1 **A.** I'm not aware.

10:32:10 2 **MS. HUGGINS:** Form.

10:32:10 3 **BY MR. RUPP:**

10:32:10 4 **Q.** Okay. Have you ever been disciplined
10:32:22 5 for any reason as a police officer or a police
10:32:24 6 detective?

10:32:24 7 **MS. HUGGINS:** Form, and a 50-A objection, to
10:32:27 8 the extent it applies. You may answer.

10:32:30 9 **THE WITNESS:** Can you define discipline?

10:32:32 10 **BY MR. RUPP:**

10:32:33 11 **Q.** Well, any type of I guess black mark in
10:32:35 12 your -- in your record where you were reprimanded,
10:32:38 13 where you were censured, where you were disciplined
10:32:40 14 in any way?

10:32:42 15 **A.** Not anything that would be like a
10:32:45 16 reprimand or a suspension, but I guess if you were
10:32:50 17 to say disciplined in any way, I don't know if
10:32:52 18 I would use the word disciplined, but I've had to
10:32:57 19 speak with, say, a lieutenant or a captain
10:33:00 20 regarding an instance on a call.

10:33:06 21 **Q.** Okay. And approximately how many times
10:33:08 22 have you had to do that?

10:33:11 23 **A.** Not very many, but I couldn't -- I

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10:33:15 1 couldn't say.

10:33:15 2 Q. All right. So nothing that resulted in
10:33:17 3 any type of suspension?

10:33:18 4 A. No.

10:33:18 5 Q. Nothing that resulted in any type of
10:33:21 6 official reprimand?

10:33:22 7 A. Correct.

10:33:22 8 Q. Okay. And nothing that resulted in
10:33:24 9 anything in your -- in your personal personnel file
10:33:27 10 that would be considered a black mark?

10:33:29 11 A. Correct.

10:33:29 12 MS. HUGGINS: Form objection and a 50-A, to
10:33:32 13 the extent that that applies.

10:33:35 14 BY MR. RUPP:

10:33:36 15 Q. All right. When you received your
10:33:42 16 training on the Tahoe -- well, let's go back to
10:33:45 17 ECC. When you received your training on the
10:33:47 18 Crown Vic and patrol vehicles generally, what kind
10:33:49 19 of training was that? What did you receive?

10:33:52 20 A. I believe it was a week-long training.
10:33:55 21 It was out at the airport, and it was different
10:34:00 22 types of driving, maneuvering. You know, we do
10:34:06 23 have to drive fast sometimes. Driving fast,

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11:07:59 1 earlier, in reference to Exhibit 3 and the initial
11:08:04 2 call to 33 Schmarbeck, that once dispatch puts
11:08:08 3 a final disposition on it and calls it archived, it
11:08:11 4 just kind of disappears from your computer; is that
11:08:14 5 right?

11:08:14 6 **A.** Right.

11:08:14 7 **Q.** Okay. Okay. So let's go through just
11:08:16 8 a couple more of these.

11:08:20 9 At 10:57:17, car C230, with Officer Schultz
11:08:28 10 and Moriarity, is en route to the scene; is that
11:08:32 11 right?

11:08:32 12 **MS. HUGGINS:** Form.

11:08:34 13 **THE WITNESS:** We were already on scene.

11:08:35 14 That's just how dispatch --

11:08:35 15 **BY MR. RUPP:**

11:08:35 16 **Q.** Okay.

11:08:37 17 **A.** -- logs it.

11:08:39 18 **Q.** All right. Fair enough.

11:08:40 19 And you say we. Was -- were you and -- and
11:08:44 20 Officer Velez also there by that time?

11:08:45 21 **A.** Yes.

11:08:46 22 **Q.** Okay. Because at 10:55, there's
11:08:51 23 a call -- there's a dispatch that comes in and

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11:08:53 1 there's a call that came in at 10:54 about a male
11:08:57 2 hit by a police car; is that right?

11:08:58 3 **A.** At 10:55:42.

11:09:01 4 **Q.** Right. Okay. So then the computer
11:09:03 5 shows you, C241, and Ms. Velez, C42, as being
11:09:12 6 dispatched/en route in that 10:57 time frame; is
11:09:17 7 that right?

11:09:17 8 **A.** Yes. We were on --

11:09:17 9 **Q.** But you --

11:09:18 10 **A.** We were on --

11:09:18 11 **Q.** But you -- but you were already there.

11:09:20 12 **A.** Yes.

11:09:21 13 **Q.** Okay. Then another call comes in.

11:09:24 14 All right. Now, at -- at 11 -- okay. Well, at
11:09:29 15 11:04:26, it says ADI notified, and what is ADI?

11:09:33 16 **A.** Ambulance.

11:09:34 17 **Q.** Okay. And do you know who summoned the
11:09:39 18 ambulance? Was that dispatch or --

11:09:42 19 **A.** I believe it was the call where -- the
11:09:45 20 line right above it, where it says she requested
11:09:47 21 the ambulance. Female requested the ambulance.

11:09:48 22 **Q.** Right. But then the entry under 8790,
11:09:52 23 it says ADI notified, do you know who would have

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11:09:57 1 put that in six seconds later?

11:10:00 2 **A.** It appears to be Edward Sauer. That's
11:10:02 3 his number.

11:10:02 4 **Q.** Okay. All right. So it looks like
11:10:07 5 dispatch ordered an ambulance to 37 Schmarbeck?

11:10:12 6 **A.** I believe so.

11:10:13 7 **Q.** Okay. And then 11:07:31, there's an
11:10:18 8 entry that looks like it was added by -- who is
11:10:26 9 000478? Is that Joseph Kessler?

11:10:28 10 **A.** Yes.

11:10:28 11 **Q.** It says, cameras on 37 has video of the
11:10:32 12 man flopping on the ground.

11:10:35 13 Do you know what that is in -- refers to?

11:10:38 14 **A.** I don't recall who would have -- he
11:10:43 15 typed it in the call. I don't recall who would
11:10:45 16 have communicated that. It could have been the
11:10:48 17 call -- the person calling 911. It could have been
11:10:50 18 one of us. But I didn't -- I don't recall hearing
11:10:53 19 that on the 911 calls when we reviewed it yesterday.

11:10:57 20 **Q.** Okay. Do you know what 37 refers to?

11:11:00 21 Is that -- 37 Schmarbeck is the address.

11:11:05 22 **A.** Yes.

11:11:06 23 **Q.** Okay.

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11:11:07 1 **A.** I --

11:11:08 2 **Q.** So had -- had you -- by 11:07 a.m., had
11:11:12 3 you ever -- had you seen any camera footage of
11:11:16 4 the -- of the actual collision of the -- of the
11:11:17 5 police car with the male?

11:11:19 6 **MS. HUGGINS:** Form.

11:11:19 7 **THE WITNESS:** No. I didn't see the camera
11:11:20 8 footage that day.

11:11:21 9 **BY MR. RUPP:**

11:11:21 10 **Q.** Okay. All right. Okay. So dispatch
11:11:24 11 you think would have added that remark from some
11:11:26 12 source of information; is that right?

11:11:28 13 **A.** Correct.

11:11:28 14 **Q.** Okay. All right. Now, just to
11:11:31 15 continue along, at 11:22 a.m., we have a location
11:11:35 16 change of the 230 -- C230 call sign, which I think
11:11:42 17 you told me was both Schultz and the trainee
11:11:44 18 Moriarity, correct?

11:11:45 19 **A.** Yes.

11:11:45 20 **Q.** And then you and Velez, C41 and C42,
11:11:50 21 are putting in a location change to ECMC; is that
11:11:54 22 right?

11:11:54 23 **A.** Yes.

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11:11:54 1 **Q.** And that was usually -- that was
11:11:56 2 accomplished by radio. You would radio in and say
11:11:59 3 you're -- you're going somewhere else or your
11:12:01 4 location has changed?

11:12:02 5 **A.** Yes. I believe Karl made that call.

11:12:04 6 **Q.** Okay. But my point is: Whoever made
11:12:06 7 it might have called in for maybe all three of you
11:12:09 8 or both vehicles, but it's done by radio.

11:12:12 9 **A.** Dis -- yeah, by dispatch.

11:12:13 10 **MS. HUGGINS:** Form.

11:12:14 11 **THE WITNESS:** Right.

11:12:15 12 **BY MR. RUPP:**

11:12:15 13 **Q.** Okay. I'm calling it radio, so that's
11:12:16 14 the communication --

11:12:16 15 **A.** We --

11:12:17 16 **Q.** -- with dispatch. You call it
11:12:18 17 dispatch?

11:12:18 18 **A.** We -- we call it radio.

11:12:20 19 **Q.** Okay.

11:12:20 20 **A.** But I -- that's just our term for it.

11:12:23 21 **Q.** Well, and I guess I'm -- okay. And
11:12:25 22 I'll use that term.

11:12:25 23 **A.** Okay.

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11:12:26 1 **Q.** But I'm kind of wanting to make sure
11:12:28 2 I'm distinguishing it from some other type of
11:12:30 3 communication, like through the computer or through
11:12:32 4 a cell phone or something.

11:12:33 5 This is radio to dispatch: My location is
11:12:35 6 changing. I'm going here.

11:12:37 7 **A.** Correct. Radio communications.

11:12:38 8 **Q.** Okay. Fair enough.

11:12:40 9 And would that location change happen when
11:12:43 10 you leave the scene of 37 Schmarbeck or when you
11:12:46 11 arrive at ECMC that you would do that or when
11:12:49 12 you're en route?

11:12:50 13 When would that happen?

11:12:51 14 **MS. HUGGINS:** Form. You can answer.

11:12:52 15 **MR. RUPP:** Strike it.

11:12:54 16 When would you normally make a location-change
11:12:57 17 call to dispatch when you're changing your location?

11:13:02 18 **THE WITNESS:** Normally it would be when we
11:13:03 19 were leaving the scene to go --

11:13:04 20 **BY MR. RUPP:**

11:13:04 21 **Q.** Okay.

11:13:05 22 **A.** -- to the location. It just depends on
11:13:07 23 when dispatch types it into the computer.

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11:16:07 1 some point in time, Karl and Kyle went back into
11:16:09 2 service.

11:16:09 3 Q. Okay. And so you and -- and Ms. Velez
11:16:13 4 stayed with Mr. Kistner wherever you were at that
11:16:16 5 point.

11:16:16 6 A. Correct.

11:16:16 7 Q. So it was just the two officers at that
11:16:18 8 point; is that right?

11:16:19 9 A. Myself and Officer Velez.

11:16:21 10 Q. Yes. Yes.

11:16:22 11 A. Yes.

11:16:22 12 Q. Okay. So then the next entry, 14:45,
11:16:26 13 says C241 NMT. Do you know what that means?

11:16:29 14 A. It stands for need more time.

11:16:31 15 Q. Okay. And based on your location
11:16:33 16 changes as logged by dispatch, does it appear that
11:16:37 17 you were still at ECMC?

11:16:40 18 A. It appears, yes.

11:16:41 19 Q. Okay. And would the C241, need more
11:16:45 20 time, was that something you would have radioed
11:16:47 21 into dispatch or typed into your computer, or how
11:16:51 22 would they get that information?

11:16:52 23 A. One or the other. I don't recall which

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11:16:53 1 one.

11:16:54 2 Q. Okay.

11:16:54 3 A. Which -- -- which communication I used.

11:16:56 4 Q. Well, when you were at ECMC, you
11:16:58 5 weren't in your patrol vehicle, right?

11:17:01 6 A. I was not.

11:17:02 7 Q. Okay.

11:17:03 8 A. But that doesn't mean I wouldn't have
11:17:05 9 gone out to the car to get, say, paperwork or
11:17:07 10 something and could have messaged.

11:17:08 11 Q. Fair enough.

11:17:09 12 A. I don't recall.

11:17:09 13 Q. Fair enough.

11:17:10 14 All right. And so then at 1537, which is
11:17:15 15 3:37 p.m. -- and I'm sorry, what time did you tell
11:17:18 16 me your shift would normally be over?

11:17:19 17 A. At 4 p.m.

11:17:21 18 Q. 4 p.m. Okay.

11:17:23 19 So at -- at 3:50 -- 3:37 p.m., about
11:17:27 20 23 minutes before your shift would normally be
11:17:29 21 over, you, and then three seconds later, Officer
11:17:34 22 Velez, location changed. What is CB?

11:17:37 23 A. Central booking.

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11:17:38 1 **Q.** Okay. All right.

11:17:41 2 **A.** And --

11:17:42 3 **Q.** And then at -- go ahead.

11:17:43 4 **A.** I'm sorry. Or cell block is how we

11:17:45 5 sometimes refer to it as well.

11:17:47 6 **Q.** Fair enough. Either -- either acronym.

11:17:49 7 All right. Then at about -- oh, about

11:17:51 8 11 minutes later, it shows both of you as being

11:17:54 9 on scene presumably at cell block or central

11:17:57 10 booking; is that right?

11:17:57 11 **A.** Yes.

11:17:57 12 **Q.** Okay. Then we have another location

11:18:01 13 change about nearly an hour later, at -- at

11:18:05 14 4:36 p.m., it says your location has changed back

11:18:10 15 to ECMC; is that right? Both you and Officer

11:18:13 16 Velez?

11:18:13 17 **A.** Yes.

11:18:13 18 **Q.** Okay. I mean, they're consecutive

11:18:15 19 entries a few seconds apart, right?

11:18:17 20 **A.** Yes.

11:18:17 21 **Q.** Because you're driving together.

11:18:19 22 **A.** Correct.

11:18:19 23 **Q.** All right. So as long as it took

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11:18:21 1 dispatch to type in, you're both going, location
11:18:23 2 change, back to ECMC; is that right?

11:18:25 3 **A.** Yes.

11:18:25 4 **Q.** Okay. And then it shows you as being
11:18:27 5 en route.

11:18:31 6 Now, and then it puts you on scene at
11:18:35 7 4:46 p.m.; is that right?

11:18:42 8 On the second page?

11:18:44 9 **A.** Oh, yes. Yes.

11:18:46 10 **Q.** Okay. So, and that means on scene, as
11:18:48 11 you are now back at ECMC; is that right?

11:18:50 12 **A.** Yes.

11:18:50 13 **Q.** Because that's where your pending
11:18:52 14 location change was -- was put in a few minutes
11:18:54 15 before.

11:18:54 16 **A.** Yes.

11:18:55 17 **Q.** Okay. And now it looks like -- so does
11:18:57 18 this mean then that you are actually, you know,
11:19:00 19 driving?

11:19:00 20 When you do the location change, are you --
11:19:03 21 at 1641, are you and Officer Velez driving in the
11:19:09 22 patrol vehicle at that point?

11:19:12 23 **MS. HUGGINS:** Form. You can answer.

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11:19:13 1 **BY MR. RUPP:**

11:19:13 2 **Q.** Do you know?

11:19:14 3 Let me -- let me phrase the question
11:19:16 4 a little bit better.

11:19:17 5 You -- you radio in a location change.

11:19:19 6 **A.** Yes.

11:19:19 7 **Q.** You're heading back to ECMC; is that
11:19:21 8 right?

11:19:21 9 **A.** Yes.

11:19:21 10 **Q.** Okay. And dispatch says, you know,
11:19:25 11 you're immediately en route; is that right?

11:19:28 12 **A.** Yes.

11:19:28 13 **Q.** Okay. So four to five minutes -- five
11:19:32 14 to four minutes later, at 1641, there's another
11:19:36 15 entry: Can you please change this call to criminal
11:19:40 16 mischief? Do you see that?

11:19:41 17 **A.** Yes.

11:19:41 18 **Q.** Okay. And based on the times, if these
11:19:46 19 times are accurate, could you have gotten from
11:19:50 20 central booking to -- back to ECMC inside of five
11:19:55 21 minutes?

11:19:58 22 **A.** Probably not.

11:19:59 23 **Q.** Okay. So does that suggest to you that

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11:20:02 1 the dispatch was advised to change the call to
11:20:05 2 criminal mischief took place while you were
11:20:07 3 en route to ECMC the second time that day?

11:20:09 4 **A.** Since I was driving, I assume that
11:20:12 5 Officer Velez would have typed it, because it is
11:20:16 6 a message.

11:20:16 7 **Q.** Okay. And -- and I was going to ask
11:20:18 8 you that. I mean, throughout this whole day, were
11:20:20 9 you the driver of your patrol vehicle --

11:20:24 10 **A.** Yes.

11:20:24 11 **Q.** -- 473?

11:20:26 12 **A.** Yes.

11:20:26 13 **Q.** Okay. And how was it that you decided,
11:20:28 14 as between you and Officer Velez, which one of you
11:20:31 15 would drive that day?

11:20:32 16 **A.** I don't remember the exact conversation,
11:20:35 17 but we usually would trade on and off who would
11:20:38 18 drive.

11:20:38 19 **Q.** Fair enough. Okay.

11:20:39 20 All right. And then if we go to the end of
11:20:46 21 this document, the last few entries, we have you on
11:20:48 22 scene back at ECMC, C241. There's no reference to
11:20:54 23 C242, but she was with you, right?

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11:20:56 1 **A.** Yes.

11:20:56 2 **Q.** Okay. And then at what would have been
11:21:02 3 6:16 p.m., 18:16:08, the disposition is added
11:21:09 4 P1375 crime report; is that right?

11:21:13 5 **A.** Yes.

11:21:13 6 **Q.** And what does the P1375 refer to, if
11:21:16 7 you know?

11:21:16 8 **A.** It's what would be -- we generically
11:21:22 9 call a police report.

11:21:23 10 **Q.** Okay. And then that's -- that's the
11:21:24 11 end of the log because it gets archived literally
11:21:27 12 a second later; is that right?

11:21:28 13 **A.** Yes.

11:21:28 14 **Q.** And I think you told me that would
11:21:30 15 close it out on your computer, and you wouldn't --
11:21:32 16 you wouldn't see that again.

11:21:33 17 **A.** Correct.

11:21:34 18 **Q.** Okay.

11:21:43 19 **A.** Can we take a bathroom break?

11:21:45 20 **MR. RUPP:** Sure thing.

11:21:45 21 (A recess was then taken at 11:21 a.m.)

11:30:06 22 (On the record at 11:30 a.m.)

11:30:06 23 **BY MR. RUPP:**

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11:30:12 1 **Q.** All right. What I want to do now,
11:30:15 2 Ms. McDermott, is listen to a couple of the
11:30:19 3 dispatch radio calls that we were produced in
11:30:22 4 discovery by your attorney, Ms. Huggins. I'm just
11:30:26 5 going to play them and then maybe ask you a few
11:30:29 6 questions about them.

11:30:29 7 I'm not sure that all but the -- maybe the
11:30:32 8 last five don't pertain to you, but perhaps you can
11:30:35 9 tell me that you heard the call or know something
11:30:37 10 about it, so that's why I'm going to play those
11:30:39 11 as well.

11:30:39 12 So starting off with the first file, which
11:30:43 13 was produced as 01011701, so call 1.

11:30:59 14 **MS. HUGGINS:** And just for the sake of the
11:31:00 15 record, what -- what had we previously marked the
11:31:02 16 disc?

11:31:06 17 **MR. RUPP:** Exhibit 10.

11:31:07 18 **MS. HUGGINS:** Thank you.

11:32:03 19 (Audio clip played.)

11:32:03 20 **MS. HUGGINS:** Do we want to just go off the
11:32:05 21 record while we figure this out?

11:32:07 22 **MR. DAVENPORT:** Yeah.

11:32:07 23 (A recess was then taken at 11:32 a.m.)

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11:39:04 1 said to cancel the ambulance.

11:39:05 2 **MR. RUPP:** Okay.

11:39:10 3 (Audio clip played.)

11:39:10 4 **BY MR. RUPP:**

11:39:10 5 **Q.** Okay. And so now Karl Schultz is
11:39:12 6 making it clear: I don't want an ambulance to come
11:39:14 7 to the scene. Is that right?

11:39:15 8 **A.** Correct.

11:39:16 9 **Q.** Okay. Did you observe Mr. Schultz make
11:39:19 10 an assessment of whether or not Mr. Kistner was
11:39:21 11 injured?

11:39:22 12 **A.** I would have been there. I don't
11:39:24 13 recall the exact assessment that was made.

11:39:26 14 **Q.** Okay. Well, my question is: Was an
11:39:28 15 assessment made?

11:39:29 16 **A.** Yes.

11:39:29 17 **Q.** Okay. How do you know that?

11:39:31 18 **A.** I would have been standing there.

11:39:33 19 **Q.** Okay. Well, you're saying, would have
11:39:34 20 been, as if you're almost referring to somebody
11:39:37 21 else.

11:39:37 22 I mean, did you -- do you recall, as you sit
11:39:39 23 here today, watching Mr. Schultz make an assessment

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11:39:42 1 of whether or not Jim Kistner was injured?

11:39:44 2 **A.** I was standing there. I'm saying
11:39:46 3 I don't recall the exact assessment that was made.

11:39:48 4 **Q.** Okay. Do you know how long the
11:39:50 5 assessment took?

11:39:50 6 **A.** No.

11:39:51 7 **Q.** Do you know if he asked Mr. Kistner any
11:39:54 8 questions?

11:39:54 9 **A.** I don't remember.

11:39:55 10 **Q.** Okay. You have no recollection of
11:39:57 11 and -- and you didn't perform an assessment; is
11:39:59 12 that right?

11:39:59 13 **A.** I -- there was a visual assessment made
11:40:03 14 that didn't appear to be any outward injuries.
11:40:06 15 There was -- he wasn't bleeding. Nothing like
11:40:08 16 that.

11:40:08 17 **Q.** Okay. You wouldn't necessarily see,
11:40:10 18 like a back injury, though, it wouldn't be
11:40:14 19 manifested with blood; would you agree with that?

11:40:16 20 **A.** A back injury could be manifested with
11:40:18 21 blood.

11:40:18 22 **Q.** But not necessarily, right?

11:40:19 23 **A.** Not necessarily.

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11:40:20 1 **Q.** Okay. What about -- what about
11:40:23 2 a spinal cord injury?

11:40:24 3 **A.** I'm not a medical professional.

11:40:25 4 **Q.** Okay. So what -- what was the extent
11:40:27 5 of your assessment of Mr. Kistner?

11:40:29 6 **A.** My assessment was that he purposely
11:40:32 7 walked towards the vehicle and threw himself into
11:40:34 8 it.

11:40:34 9 **Q.** Okay. But what was your assessment of
11:40:36 10 whether or not he was injured from that?

11:40:38 11 **A.** Again, I'm not a medical -- medical
11:40:41 12 professional. I did not see -- visually see any
11:40:44 13 injuries.

11:40:44 14 **Q.** Okay. Did anybody else do an
11:40:46 15 assessment?

11:40:46 16 You said you were there when Mr. Schultz did
11:40:49 17 one, but you're not sure what he did. You did one.
11:40:52 18 Did anybody else do an assessment?

11:40:54 19 **A.** As far as a visual assessment?

11:40:56 20 **Q.** Any type of assessment.

11:40:57 21 **A.** You would have to ask the other
11:41:00 22 officers that were there.

11:41:00 23 **Q.** Okay. All right.

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11:41:01 1 Did you overhear any questions asked of
11:41:04 2 Mr. Kistner as to whether he was injured or not?
11:41:06 3 **A.** I don't recall.
11:41:06 4 **Q.** Okay. And you don't recall asking any
11:41:09 5 yourself?
11:41:09 6 **A.** I don't recall.
11:41:10 7 **Q.** Do you recall speaking to Mr. Kistner
11:41:12 8 at all before, for example, he was handcuffed?
11:41:18 9 **A.** I may have.
11:41:18 10 **Q.** When you first saw Mr. Kistner, where
11:41:20 11 was he?
11:41:20 12 **A.** On the ground.
11:41:21 13 **Q.** Okay.
11:41:21 14 **MS. HUGGINS:** Form.
11:41:23 15 **THE WITNESS:** Well, yeah. Sorry. First
11:41:25 16 saw --
11:41:25 17 **BY MR. RUPP:**
11:41:25 18 **Q.** Let's say after the impact with the
11:41:26 19 police vehicle, where was he?
11:41:27 20 **A.** On the ground.
11:41:28 21 **Q.** Okay. Was he on his back? Side?
11:41:31 22 Front?
11:41:31 23 **A.** I believe he was rolling. I don't

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11:41:34 1 recall if he was on his stomach or back first, but
11:41:37 2 he was kind of rolling on the ground.

11:41:39 3 Q. Okay.

11:41:40 4 A. From side to side.

11:41:41 5 Q. Did you hear an impact in your -- in
11:41:43 6 your police vehicle or patrol vehicle?

11:41:49 7 A. I don't recall.

11:41:50 8 Q. All right. Well, how did you know that
11:41:52 9 there had been physical contact between Mr. Kistner
11:41:56 10 and your patrol vehicle?

11:41:58 11 A. I saw it.

11:41:59 12 Q. Okay. What did you see?

11:42:01 13 A. I saw him walking towards my vehicle
11:42:05 14 very fast or quickly, and he didn't stop.

11:42:11 15 Q. Okay. And you don't remember whether
11:42:14 16 you were stationary or moving yourself in the
11:42:18 17 patrol vehicle.

11:42:19 18 A. Prior to him making contact, I was
11:42:23 19 trying to drive away. As he kept coming, I slammed
11:42:26 20 on the brakes.

11:42:28 21 Q. Okay. Had you seen him before you
11:42:31 22 slammed on the brakes?

11:42:34 23 A. Prior --

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11:43:50 1 Does that refresh your recollection at all or
11:43:52 2 whether your window would be up or down or you just
11:43:55 3 don't know?

11:43:55 4 **A.** I don't remember.

11:43:56 5 **Q.** Okay. Was Ms. Velez in the vehicle
11:43:59 6 as well?

11:43:59 7 **A.** Yes.

11:43:59 8 **Q.** And do you know whether she was looking
11:44:01 9 at Mr. Kistner?

11:44:02 10 **A.** I don't recall.

11:44:03 11 **Q.** Did she say anything to you before the
11:44:05 12 impact?

11:44:06 13 **A.** I don't recall.

11:44:07 14 **Q.** Did you say anything to her?

11:44:08 15 **A.** I don't recall.

11:44:09 16 **Q.** And you didn't hear anybody call out
11:44:11 17 a warning or say anything.

11:44:13 18 **A.** No.

11:44:13 19 **Q.** Okay. What were you intending to do if
11:44:23 20 the collision or if the impact had not happened?

11:44:27 21 **MS. HUGGINS:** Form.

11:44:27 22 **BY MR. RUPP:**

11:44:28 23 **Q.** You're in your vehicle now with

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11:44:29 1 Ms. Velez, right?

11:44:31 2 **A.** Correct.

11:44:31 3 **Q.** Officer Schultz and Moriarity have left
11:44:34 4 in their patrol vehicle, correct?

11:44:36 5 **A.** They had started to drive away.

11:44:38 6 **Q.** Right. They were in motion at the time
11:44:39 7 of the impact, right?

11:44:43 8 **A.** I don't know if they were in motion or
11:44:44 9 if they had stopped down the street.

11:44:45 10 **Q.** Okay. Do you know where they were
11:44:48 11 going?

11:44:48 12 **A.** I don't.

11:44:49 13 **Q.** Okay. And what were you planning to do
11:44:52 14 with Ms. Velez in the passenger seat?

11:44:55 15 **A.** We were leaving the scene.

11:44:57 16 **Q.** Okay. You were planning to leave.

11:44:58 17 **A.** Yes.

11:44:58 18 **Q.** Okay. And which way were you planning
11:45:00 19 to leave on Schmarbeck?

11:45:02 20 **A.** The direction our vehicle was facing.
11:45:05 21 I believe north.

11:45:07 22 **Q.** So your plan was to pull forward down
11:45:10 23 Schmarbeck and go where you were going to go next;

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11:45:12 1 is that right?

11:45:12 2 **A.** Correct.

11:45:13 3 **Q.** You weren't going to turn around in
11:45:14 4 a driveway or turn around, make a three-point turn
11:45:17 5 in the street or anything.

11:45:18 6 **A.** No.

11:45:18 7 **Q.** Okay. And when you -- when you saw
11:45:23 8 Mr. Kistner, did you stop?

11:45:28 9 When you saw him coming, you said approaching
11:45:30 10 the side of your vehicle, what did you do?

11:45:33 11 **A.** No. I was trying to pull out of where
11:45:35 12 I was parked.

11:45:36 13 **Q.** Okay. Had you started pulling out yet?

11:45:38 14 **A.** Yes.

11:45:38 15 **Q.** Okay. So you were moving?

11:45:41 16 **MS. HUGGINS:** Form.

11:45:41 17 **THE WITNESS:** I had backed up, and I had
11:45:44 18 turned the wheel and started to pull around I think
11:45:47 19 it was a red minivan that was parked there.

11:45:49 20 **BY MR. RUPP:**

11:45:49 21 **Q.** When -- when you backed up, where were
11:45:52 22 you looking?

11:45:54 23 **A.** I -- I don't -- I don't recall.

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11:45:56 1 **Q.** Well, when you were trained to drive
11:45:59 2 a Tahoe and the training you received on the Crown
11:46:02 3 Vic at ECC, what were you trained to do when you
11:46:05 4 backed up a patrol vehicle?

11:46:05 5 **A.** Well, I would have -- there's no
11:46:07 6 rearview mirror camera, so I would have looked
11:46:10 7 in both mirrors. I would have turned around and
11:46:13 8 looked.

11:46:13 9 **Q.** What about rear view?

11:46:15 10 **A.** Rearview mirror?

11:46:16 11 **Q.** Yes. You had one.

11:46:17 12 **A.** I would have looked in it.

11:46:18 13 **Q.** Okay. So you backed up. How many feet
11:46:21 14 did you back up?

11:46:22 15 **A.** I don't know exactly.

11:46:23 16 **Q.** We'll look at the video, but why did
11:46:26 17 you back up? Why didn't you pull straight forward?

11:46:27 18 **A.** Because there was a red minivan parked
11:46:29 19 there, and I was -- would have been too close to
11:46:30 20 pull straight forward out.

11:46:30 21 **Q.** So you needed to back up and you're
11:46:32 22 checking mirrors; is that right?

11:46:33 23 **A.** Yes.

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11:46:33 1 **Q.** So you're not looking ahead at that
11:46:35 2 point. You're not looking out the windshield.

11:46:37 3 **A.** Well, I would look in both side-view
11:46:40 4 mirrors, the rearview, and turn around just to
11:46:42 5 confirm that there was nothing behind me.

11:46:44 6 **Q.** All right. So --

11:46:44 7 **A.** When I was actually going backwards,
11:46:47 8 I don't know what direction I was looking at the
11:46:48 9 time.

11:46:49 10 **Q.** Do you actually have a recollection of
11:46:52 11 looking in both side-view mirrors, your rearview,
11:46:55 12 and turning around to back up to get around the red
11:46:58 13 vehicle?

11:46:58 14 Do you actually remember doing that or are
11:47:01 15 you just telling me what you think you would have
11:47:03 16 done?

11:47:03 17 **A.** I'm telling you what, in the years of
11:47:05 18 driving that I've done, police and outside, that's
11:47:09 19 how I check to make sure before I pull out of --

11:47:14 20 **Q.** All right.

11:47:14 21 **A.** Before I back up.

11:47:15 22 **Q.** And I understand that, but I just want
11:47:17 23 to make sure that, you know, backing up -- it was

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11:47:20 1 a fairly short distance you backed up on Schmarbeck
11:47:22 2 to get around the red vehicle, right?

11:47:24 3 **A.** Yes.

11:47:24 4 **Q.** It wasn't like a long distance,
11:47:25 5 multiple feet. You just backed up a little bit
11:47:28 6 to be able to pull forward, correct?

11:47:29 7 **A.** To give myself some front space.

11:47:32 8 **Q.** And that's the only reason I'm asking
11:47:34 9 you, is under those circumstances, given your
11:47:36 10 experience as a driver and your training, your
11:47:38 11 police training, are -- are -- are you confident
11:47:40 12 that you would have looked in rear -- both
11:47:42 13 rearview -- both side-view mirrors, the rearview,
11:47:45 14 and turned around before you backed up those few
11:47:47 15 feet?

11:47:48 16 **A.** Yes, I'm confident that I would have
11:47:49 17 done that.

11:47:49 18 **Q.** Okay. And you would agree with me that
11:47:51 19 each time you did that, your eyes could not have
11:47:54 20 been looking out the windshield.

11:47:56 21 **A.** Well, when I turned around and looked,
11:47:58 22 I wouldn't have necessarily been moving backwards.

11:48:01 23 **Q.** I understand that --

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11:48:02 1 **A.** That was --

11:48:03 2 **Q.** -- but --

11:48:03 3 **A.** That's --

11:48:04 4 **Q.** -- in the moment when you've turned

11:48:05 5 around, you would agree, you're not looking out the

11:48:07 6 windshield, right?

11:48:08 7 **A.** Yes.

11:48:08 8 **Q.** You're not looking out the passenger

11:48:10 9 side to see somebody approaching the side of your

11:48:13 10 vehicle, correct?

11:48:13 11 **A.** But that would have been before

11:48:15 12 I started moving forward.

11:48:16 13 **Q.** I understand that. I understand that.

11:48:18 14 But I just want to make sure that, you know, when

11:48:20 15 you turned around, you would have turned around to

11:48:22 16 the right, correct?

11:48:23 17 **A.** Yes.

11:48:23 18 **Q.** Okay. Towards the center of the vehicle.

11:48:26 19 **A.** Yes.

11:48:26 20 **Q.** Looked out the back window.

11:48:28 21 **A.** Correct.

11:48:28 22 **Q.** Okay. And at that time, you're not

11:48:29 23 going to be looking out the windshield or your side

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11:48:33 1 window, correct?

11:48:33 2 **A.** Right.

11:48:33 3 **Q.** Okay. Now, when you looked at the
11:48:35 4 rear -- the right passenger side-view mirror, your
11:48:38 5 vision is going to be looking out that side of the
11:48:42 6 car by that door post, correct?

11:48:44 7 **A.** Yes.

11:48:44 8 **Q.** So you're not going to be looking out
11:48:46 9 the windshield and to your left to see somebody
11:48:48 10 approaching from the side, correct?

11:48:49 11 **A.** Correct.

11:48:50 12 **Q.** All right. And when you looked in the
11:48:51 13 rearview mirror, your eyes were up, you were
11:48:55 14 looking in a mirror, focusing on what that mirror
11:48:58 15 is reflecting from behind you, correct?

11:49:00 16 **A.** Yes.

11:49:00 17 **Q.** And so you're not, again, looking out
11:49:02 18 the windshield or looking out the driver's side
11:49:05 19 window to see somebody approaching from the side;
11:49:07 20 is that right?

11:49:07 21 **A.** Yes.

11:49:07 22 **Q.** All right. And when you looked at the
11:49:09 23 left rearview -- or side-view mirror, you were

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11:49:12 1 focusing on what that mirror was reflecting from
11:49:15 2 behind you, not what was out the windshield or what
11:49:18 3 you could see out the left of the driver's side
11:49:21 4 window; is that correct?

11:49:23 5 **A.** Well, if I'm looking at the side-view
11:49:25 6 mirror on the driver's side, I can see still past
11:49:29 7 the mirror.

11:49:30 8 **Q.** Okay. At any time prior -- and when
11:49:32 9 you backed up, you -- you obviously put the vehicle
11:49:34 10 in reverse, right?

11:49:35 11 **A.** Yes.

11:49:35 12 **Q.** Okay. At any time prior to putting the
11:49:39 13 vehicle into -- I assume you -- you went from
11:49:41 14 reverse then to drive; is that right?

11:49:42 15 **A.** Yes.

11:49:42 16 **Q.** Okay. At any time prior to changing
11:49:44 17 the gear of the vehicle to drive, had you seen
11:49:48 18 Mr. Kistner approaching the side of your vehicle?

11:49:51 19 **A.** I don't know exactly what moment and
11:49:54 20 where -- what -- if the car was in drive or -- or
11:49:57 21 reverse when I --

11:49:58 22 **Q.** Okay.

11:49:59 23 **A.** -- first saw him.

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11:50:00 1 **Q.** All right. And as you pulled forward,
11:50:03 2 as of that moment, had you seen Mr. Kistner
11:50:05 3 approaching the side of your vehicle?

11:50:07 4 **A.** I don't know at what moment I would
11:50:10 5 have first seen him.

11:50:12 6 **Q.** Okay. How quickly after you checked
11:50:14 7 both side views, the rearview, and turned around
11:50:16 8 and looked behind you did you change the gearshift
11:50:20 9 for the vehicle from reverse to drive?

11:50:22 10 **A.** I don't recall.

11:50:24 11 **Q.** Okay. All right. We'll listen to the
11:50:29 12 rest of this.

11:50:31 13 I guess that was the rest of it.

11:50:32 14 **MR. DAVENPORT:** Yeah.

11:50:35 15 **MR. RUPP:** Okay. I'm going to look at
11:50:37 16 now -- we have another file that's marked with
11:50:46 17 a suffix of 01. It's 37 Scharmbek, and it's
11:50:53 18 01011701. So the only difference in the file name
11:50:57 19 is the change of address from 33 to 37.

11:50:59 20 So I'm going to play that one for you now.

11:51:15 21 (Audio clip played.)

11:51:15 22 **BY MR. RUPP:**

11:51:16 23 **Q.** Okay. Would you agree with me that

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11:51:18 1 this appears to be from a 911 call and not from
11:51:21 2 a fellow police officer?

11:51:22 3 **A.** Yes.

11:51:23 4 **MR. RUPP:** Okay. I'm going to play the one
11:51:29 5 marked suffix 2.

11:51:34 6 (Audio clip played.)

11:51:34 7 **BY MR. RUPP:**

11:51:34 8 **Q.** All right. Charlie 230 we've
11:51:36 9 established is Mr. Schultz, right?

11:51:37 10 **A.** Yes.

11:51:38 11 **MR. RUPP:** Okay.

11:52:12 12 (Audio clip played.)

11:52:12 13 **BY MR. RUPP:**

11:52:12 14 **Q.** Now, that was Officer Schultz giving
11:52:16 15 his version of -- of what happened when there was
11:52:19 16 the physical contact between your vehicle and
11:52:22 17 Mr. Kistner.

11:52:23 18 Do you know where Mr. Schultz was when that
11:52:28 19 impact took place?

11:52:31 20 **A.** In his patrol vehicle.

11:52:33 21 **Q.** Okay. And how far away was his patrol
11:52:36 22 vehicle from you?

11:52:36 23 **A.** I don't know.

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11:52:37 1 **Q.** Did you see his patrol vehicle, on the
11:52:39 2 videos you watched yesterday, depart and pull down
11:52:43 3 Scharmbbeck in the same direction that you just told
11:52:44 4 me you were planning to follow?

11:52:46 5 **A.** Yes.

11:52:46 6 **Q.** Okay. And judging from the speed that
11:52:49 7 he departed from the video screen, can you estimate
11:52:51 8 for me approximately how far away he was when the
11:52:54 9 impact happened between your patrol vehicle and
11:52:57 10 Mr. Kistner?

11:52:59 11 **A.** I don't know the exact distance.

11:53:00 12 **Q.** Okay. Do you know where Mr. Schultz
11:53:02 13 was looking as he was -- he was the operator of
11:53:04 14 that vehicle, right?

11:53:05 15 **A.** I believe he was the passenger.

11:53:06 16 **Q.** Okay. So Officer Moriarity was
11:53:08 17 driving?

11:53:08 18 **A.** Yes.

11:53:09 19 **Q.** Okay. Did you have a conversation with
11:53:12 20 Mr. Schultz on Scharmbbeck, on January 1, 2017,
11:53:16 21 while you were at the scene, as to what he had
11:53:19 22 seen?

11:53:19 23 **A.** Yes.

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12:00:13 1 **A.** Someone may have.
12:00:14 2 **Q.** Okay. But you don't know?
12:00:15 3 **A.** Correct.
12:00:15 4 **Q.** Who would have those records?
12:00:18 5 **A.** I believe the garage. I don't -- I
12:00:21 6 wouldn't keep those records.
12:00:21 7 **Q.** Well, when is the next time you drove
12:00:23 8 this vehicle?
12:00:24 9 **A.** I drove it that day.
12:00:26 10 **Q.** Well, okay. But then did you drive it
12:00:28 11 the next day, on the 2nd?
12:00:30 12 **A.** I believe the next few days were our
12:00:33 13 days off.
12:00:33 14 **Q.** Okay. So your platoon was the one that
12:00:35 15 was retiring out on double-up day?
12:00:37 16 **A.** I believe so.
12:00:38 17 **Q.** Okay. Do you know if anybody else
12:00:40 18 drove that vehicle the next day?
12:00:42 19 **A.** I don't know.
12:00:43 20 **Q.** Did you ever drive it again?
12:00:46 21 **A.** I believe so.
12:00:46 22 **Q.** Okay. Was the mirror fixed at that
12:00:49 23 time?

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12:00:49 1 **A.** I don't know when the mirror would have
12:00:51 2 been fixed.

12:00:51 3 **Q.** Well, you -- you don't -- did you --
12:00:54 4 I mean, you knew that it was damaged, you told me,
12:00:56 5 on the -- on January 1st.

12:00:59 6 The next time you got in that vehicle, did
12:01:01 7 you check to see whether the mirror and the window
12:01:03 8 had been repaired?

12:01:04 9 **A.** I just don't remember. It's been
12:01:06 10 a while.

12:01:06 11 **Q.** Okay. Well, did -- did you ever check
12:01:09 12 to see if those had been repaired?

12:01:11 13 You've got this window that won't track up
12:01:13 14 and down properly and you've got a broken mirror,
12:01:15 15 right?

12:01:16 16 **A.** Yes.

12:01:16 17 **Q.** Okay. So did there come a time when
12:01:17 18 you said to yourself: Oh, you know, they must have
12:01:20 19 fixed that, because it's not broken anymore?

12:01:22 20 **A.** I -- I don't remember how long after
12:01:25 21 that I would have driven that vehicle.

12:01:28 22 **Q.** Okay. Well, your platoon would have
12:01:31 23 been off for how many days?

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12:01:32 1 **A.** Either three or four.

12:01:33 2 **Q.** All right. So would you have driven

12:01:36 3 that vehicle -- you said you like to drive that one

12:01:38 4 because you and Officer Velez kept it clean, right?

12:01:40 5 **A.** Yes.

12:01:41 6 **Q.** So when you came back after a three- or

12:01:43 7 four-day break for being off on your normal schedule,

12:01:46 8 was the mirror and the window fixed?

12:01:48 9 **A.** I don't -- I don't remember.

12:01:49 10 **Q.** Okay. Well, do you remember checking

12:01:52 11 to see if they had been fixed?

12:01:54 12 **A.** I may have, but I don't -- I don't

12:01:56 13 remember.

12:01:56 14 **Q.** Okay. So as you sit here today, you

12:01:59 15 have -- you have no recollection of whether you put

12:02:01 16 in a repair requisition form on the vehicle, and

12:02:04 17 you have no recollection of actually checking to

12:02:06 18 see if repairs had been made?

12:02:07 19 **A.** Correct.

12:02:08 20 **Q.** Okay. And I'm sorry. Maybe you told

12:02:10 21 me and I've forgotten. My apologies. What -- what

12:02:12 22 was the actual damage to the mirror?

12:02:15 23 **A.** The -- where the mirror connects to the

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12:02:17 1 actual vehicle was -- was disconnected and it was
12:02:22 2 shaking, so when you drove, the whole mirror frame
12:02:26 3 would shake.

12:02:26 4 Q. Okay. So that was something you could
12:02:29 5 see whenever you were looking at those mirrors,
12:02:31 6 right?

12:02:31 7 A. Yes.

12:02:31 8 Q. And you told me that you, in your
12:02:33 9 experience as a driver and your training from the
12:02:35 10 police academy, et cetera, used your side-view
12:02:38 11 mirrors, correct?

12:02:39 12 A. Yes.

12:02:39 13 Q. All right. So the next time you drove
12:02:40 14 that vehicle, you would have noticed and known if
12:02:44 15 that mirror was still shaking, as you just
12:02:48 16 described, right?

12:02:49 17 A. I would have noticed it, yes.

12:02:51 18 Q. Okay. So do you recall ever driving
12:02:53 19 the vehicle after January 1 of 2017, at any time
12:02:57 20 when your platoon came back on shift, where that
12:02:59 21 mirror was still jiggling like you just described
12:03:02 22 for the record?

12:03:03 23 A. I -- I may have not --

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12:03:07 1 **Q.** I'm not asking what you may have. I'm
12:03:09 2 asking if you remember.

12:03:10 3 **A.** I don't remember.

12:03:10 4 **Q.** So you have -- as you sit here today,
12:03:12 5 you have no recollection of driving that vehicle
12:03:14 6 after January 1, 2017, with the mirror jiggling --
12:03:19 7 jiggling, as you just described, because it had
12:03:20 8 been partially detached from the vehicle?

12:03:22 9 **A.** Not that I can remember.

12:03:23 10 **MR. RUPP:** Okay.

12:03:31 11 (Audio clip played.)

12:03:31 12 **MR. RUPP:** I'm going to back this up
12:03:33 13 a little bit.

12:03:50 14 (Audio clip played.)

12:03:50 15 **BY MR. RUPP:**

12:03:50 16 **Q.** Let me ask you: Did you ever see C230,
12:03:55 17 Officer Schultz, looking at the mirror or testing
12:03:57 18 the window after the incident?

12:04:00 19 **A.** I don't remember.

12:04:01 20 **Q.** Do you know if that's shown on
12:04:04 21 videotape of the surveillance cameras at
12:04:08 22 37 Schmarbeck, that Officer Schultz went over to
12:04:10 23 your vehicle and looked at the mirror?

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12:04:12 1 **A.** The vehicle -- or the -- I'm sorry --
12:04:14 2 the video's all -- is broken up in time frames, so
12:04:18 3 I -- I -- I don't believe that the entire -- the
12:04:21 4 video, in its entirety, was even produced.

12:04:23 5 **Q.** But my question is: Did you ever see,
12:04:25 6 on any of the video segments that you watched,
12:04:27 7 before this call came in, Officer Schultz going up
12:04:31 8 to the mirror on that vehicle and inspecting it?

12:04:36 9 **MS. HUGGINS:** Form. You can answer.

12:04:37 10 **THE WITNESS:** I would have to watch the
12:04:39 11 video again. I don't know if he did or not.

12:04:41 12 **MR. RUPP:** Okay. We -- we will watch the
12:04:43 13 video and -- and I'll ask you that.

12:04:59 14 (Audio clip played.)

12:04:59 15 **BY MR. RUPP:**

12:04:59 16 **Q.** Okay. Let's listen to 6 now.

12:05:07 17 Let me ask you this before I do 6. We know
12:05:10 18 that these calls from Officer Schultz have come in
12:05:15 19 on the times logged on the call log. Can you tell
12:05:24 20 the first time -- can you tell exactly from the
12:05:27 21 call log the moment when the accident happened?

12:05:31 22 **A.** The -- just to clarify, the call log is
12:05:35 23 when dispatch enters it.

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12:05:36 1 **Q.** Right.

12:05:36 2 **A.** That's not necessarily the exact moment
12:05:38 3 it was called in.

12:05:40 4 **Q.** Okay.

12:05:41 5 **A.** That's just a matter of when dispatch
12:05:43 6 types it into the log.

12:05:44 7 **Q.** Sure.

12:05:45 8 Do you know if this was called in right
12:05:46 9 away?

12:05:46 10 **A.** I don't know what the time frame of
12:05:49 11 what it is that was called.

12:05:49 12 **MR. RUPP:** Okay.

12:06:10 13 (Audio clip played.)

12:06:10 14 **BY MR. RUPP:**

12:06:11 15 **Q.** All right. So let's stop there.

12:06:12 16 We already talked about you being made
12:06:14 17 primary, and that was at 1:14 p.m., on January '17;
12:06:20 18 is that right?

12:06:20 19 **A.** That's when dispatch typed it in or
12:06:23 20 changed it.

12:06:24 21 **MR. RUPP:** Sure. Okay. All right. Let's
12:06:29 22 listen to -- this one is 7.

12:06:31 23 (Audio clip played.)

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12:11:26 1 **MR. RUPP:** That last little blurb there.

12:11:29 2 Okay.

12:11:29 3 All right. Two more. This is 10.

12:11:52 4 (Audio clip played.)

12:11:52 5 **BY MR. RUPP:**

12:11:53 6 **Q.** All right. So that matches up pretty
12:11:54 7 exactly with the 1636 entries, again, location
12:11:59 8 changed of you and Officer Velez to ECMC, right?

12:12:02 9 **A.** Yes.

12:12:03 10 **Q.** So, presumably, you would have made
12:12:05 11 that call sometime before 4:36:51 p.m.; is that
12:12:09 12 right?

12:12:09 13 **A.** Yes.

12:12:11 14 **MR. RUPP:** Okay. And last of the radio
12:12:17 15 dispatch excerpts that were provided to us by
12:12:21 16 counsel is number 11.

12:12:35 17 (Audio clip played.)

12:12:35 18 **BY MR. RUPP:**

12:12:36 19 **Q.** Okay. What is it you said there?

12:12:37 20 **A.** Miles -- I -- I don't --

12:12:39 21 **Q.** On seen outside of it sounded like, but
12:12:42 22 maybe I have that wrong.

12:12:43 23 **A.** On -- on scene miles.

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12:12:45 1 **Q.** On scene miles?

12:12:46 2 **A.** Because we give -- we give mileage from
12:12:48 3 when we leave one destination and go to the next.

12:12:53 4 **Q.** All right. So you're -- let me just
12:12:54 5 back up a little bit. You're providing the mileage
12:12:58 6 to the dispatch officer -- or dispatch employee?

12:13:00 7 **A.** The last two odometer numbers.

12:13:03 8 **MR. RUPP:** Okay.

12:13:10 9 (Audio clip played.)

12:13:10 10 **BY MR. RUPP:**

12:13:10 11 **Q.** On scene?

12:13:11 12 **A.** Miles five seven.

12:13:13 13 **MR. RUPP:** Miles five seven. Okay.

12:13:19 14 (Audio clip played.)

12:13:19 15 **BY MR. RUPP:**

12:13:20 16 **Q.** All right. And that's 16 -- would you
12:13:23 17 say 1646, that corresponds with the 1646 on scene,
12:13:29 18 C241, on the second page of 4A; is that right?

12:13:34 19 **A.** Yes.

12:13:34 20 **Q.** Okay. That's it for the audio
12:13:38 21 recordings.

12:13:39 22 Now, I want to see if we can get the
12:13:41 23 technology going here to show you some of the video

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12:13:44 1 and ask you some questions about that.

12:13:47 2 We'll plug in the HDMI and see if the TV is
12:13:51 3 up and running.

12:14:03 4 Now, prior to the lawsuit commenced by
12:14:06 5 Mr. Kistner, had -- had you seen any of the video
12:14:09 6 of the incident on January 1, 2017?

12:14:12 7 **A.** No.

12:14:12 8 **Q.** Okay. And after you understood -- or
12:14:16 9 were served and you understood you were part of
12:14:20 10 a lawsuit, how long was it before you -- you saw
12:14:22 11 any video excerpts?

12:14:24 12 Or when was the first -- I guess I'll ask it
12:14:27 13 differently. Strike that.

12:14:28 14 When is the first time you saw the
12:14:29 15 surveillance video excerpts from 37 Scharmebeck --
12:14:35 16 Schmarbeck?

12:14:35 17 **A.** I believe it was the day that I was
12:14:37 18 served.

12:14:37 19 **Q.** Okay. And how was it that that came
12:14:40 20 about? How did you see the video that day?

12:14:42 21 **A.** I believe it was given in the copy of
12:14:44 22 the -- when I was served with the --

12:14:47 23 **Q.** The summons and complaint?

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12:14:47 1 **A.** -- paperwork.
12:14:48 2 **Q.** Okay.
12:14:48 3 **A.** Yes.
12:14:49 4 **Q.** Was there some type of digital media
12:14:51 5 that allowed you to view those?
12:14:53 6 **A.** Yes.
12:14:54 7 **Q.** And that was the first time that you
12:14:57 8 had seen them?
12:14:57 9 **A.** Yes.
12:14:57 10 **Q.** Okay. All right. I'm going to play --
12:14:59 11 I'll read the last four digits of it.
12:15:01 12 It's a video segment. On this disc,
12:15:05 13 I believe is how it was produced to the City, is --
12:15:08 14 ends in 5252. Okay?
12:15:13 15 We'll just watch that and then we'll
12:15:16 16 probably watch it again. This is -- I'm going to
12:15:17 17 speed through this one, because I think it's really
12:15:20 18 just mostly video of a red car.
12:15:21 19 **A.** Yes.
12:15:21 20 **Q.** Which I think you referenced earlier,
12:15:28 21 but --
12:15:28 22 **MR. DAVENPORT:** Can we turn off the lights
12:15:29 23 closest to the TV, just so we don't have the glare?

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12:15:36 1 (Video clip played.)

12:15:36 2 **BY MR. RUPP:**

12:15:37 3 Q. All right. Now, earlier in your
12:15:39 4 testimony, Ms. McDermott, you gave -- you told me
12:15:41 5 about a -- a red vehicle, and maybe you even
12:15:42 6 referred to it as a red SUV. Is that the vehicle
12:15:45 7 you were talking about?

12:15:45 8 A. Yes. I think I said it was a red
12:15:47 9 minivan.

12:15:48 10 Q. Okay. Is that -- I can't even tell.
12:15:50 11 Is that a minivan?

12:15:51 12 A. It -- I believe so.

12:15:51 13 Q. Okay. All right. And fair to say that
12:15:53 14 this video segment, which is marked on the screen
12:15:56 15 anyway as January 1, 2017, at 9:53 p.m., that that
12:16:02 16 is -- that predates in time your arrival at 33,
12:16:08 17 37 Schmarbeck, correct?

12:16:10 18 MS. HUGGINS: Form.

12:16:10 19 THE WITNESS: I think you said p.m.

12:16:12 20 **BY MR. RUPP:**

12:16:12 21 Q. A.m. My apologies.

12:16:15 22 Is this before you got there?

12:16:16 23 A. I don't know about the -- if the video

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12:18:06 1 Moriarity in which Kyle Schultz was a -- Karl
12:18:10 2 Schultz was a passenger?
12:18:11 3 **A.** Yes.
12:18:11 4 **Q.** Arriving on scene at 33, 37 Schmarbeck?
12:18:17 5 **A.** I believe right now they're in front of
12:18:19 6 33.
12:18:19 7 **Q.** Okay. But you do recognize this as
12:18:22 8 Schmarbeck.
12:18:22 9 **A.** Yes.
12:18:22 10 **Q.** Okay. And this does appear to be two
12:18:27 11 of the vehicles at least that you saw there when
12:18:30 12 you and Officer Velez arrived on scene, correct?
12:18:33 13 **A.** Yes.
12:18:34 14 **Q.** Okay. These two vehicles that are
12:18:35 15 shown here in this frozen screen that I'm circling
12:18:38 16 with the cursor were already there by the time the
12:18:41 17 two of you arrived.
12:18:41 18 **A.** Yes.
12:18:42 19 **Q.** Okay. So I'm just going to keep
12:18:43 20 playing this.
12:18:47 21 We see the vehicle being driven by Officer
12:18:50 22 Moriarity backing up and we see an officer getting
12:18:52 23 out, and do you recognize that officer?

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12:18:53 1 **A.** It's -- I believe it's Kyle Moriarity.

12:18:56 2 **Q.** Okay. Now, obviously, it's -- it's
12:18:58 3 not -- we can't really zoom in on facial features.

12:19:02 4 What is it that tells you that that's Officer
12:19:06 5 Moriarity?

12:19:06 6 **A.** He was on scene that day and he was
12:19:08 7 wearing a hat and Karl was not.

12:19:09 8 **Q.** Okay. And in that video, maybe you can
12:19:12 9 make it out, the person there is wearing a hat?

12:19:16 10 **A.** Yes.

12:19:16 11 **Q.** Okay. And do you know Officer
12:19:18 12 Moriarity -- Moriarity?

12:19:18 13 **A.** Yes.

12:19:18 14 **Q.** Okay. And -- and he's -- he's still
12:19:21 15 with C District?

12:19:24 16 **A.** I don't -- I think he might be at
12:19:26 17 B District.

12:19:27 18 **Q.** Okay. So he was maybe just training
12:19:28 19 with C District?

12:19:29 20 **A.** Yes.

12:19:30 21 **Q.** Okay.

12:19:30 22 **A.** He did work at C District after he was
12:19:32 23 done training, but at -- at present time, I don't

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12:19:35 1 believe he's at C anymore.

12:19:37 2 Q. So I'm -- I'm letting this play while
12:19:39 3 we're talking because it doesn't really show a lot.

12:19:42 4 There's a gentleman -- or it looks like
12:19:43 5 a man moving his arms around, facing the street
12:19:46 6 Schmarbeck, and then the individual who you think
12:19:49 7 is Kyle Moriarity appears to be speaking to him
12:19:52 8 a few feet away. Would you agree?

12:19:55 9 A. Yes.

12:19:55 10 Q. Okay. Now, in this screen, in the
12:19:57 11 upper left, we see what appears to be another
12:20:00 12 marked BPD patrol vehicle pulling up on the -- I
12:20:07 13 guess the right side of the road, where -- where
12:20:10 14 Officer Moriarity's SUV is kind of blocking the
12:20:13 15 left side of the road. Do you see that?

12:20:14 16 A. Yes.

12:20:14 17 Q. All right. Whose vehicle is that?

12:20:16 18 A. My vehicle.

12:20:17 19 Q. Who's driving?

12:20:17 20 A. I am.

12:20:18 21 Q. And is that patrol vehicle 473?

12:20:21 22 A. Yes.

12:20:21 23 Q. Okay. Now, the dispatch -- the call

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12:20:30 1 log didn't really tell me, but why -- why were two
12:20:32 2 SUVs and four officers dispatched to Schmarbeck for
12:20:37 3 the -- the initial complaint at 33 Schmarbeck?

12:20:41 4 **A.** I had been to that address earlier in
12:20:43 5 the week, so I was familiar with the situation, so
12:20:49 6 Officer Velez and I just covered, meaning we
12:20:51 7 covered on the call.

12:20:54 8 **Q.** So that means to say you saw it come
12:20:57 9 across your computer screen; you said, I'm going to
12:20:59 10 go there too.

12:21:00 11 **A.** Yes.

12:21:00 12 **Q.** Okay. Fair enough.

12:21:01 13 All right. I'm going to let it play
12:21:03 14 a little bit.

12:21:08 15 I believe -- I'm going to finish off you
12:21:09 16 driving up, because I think you -- you come to
12:21:11 17 a parked location somewhere mostly behind the red
12:21:17 18 minivan, right?

12:21:19 19 **A.** Yes. I think later on I actually move
12:21:21 20 forward even more.

12:21:22 21 **Q.** Okay. That was -- was going to be one
12:21:25 22 of my questions, so I'm glad you mentioned that.
12:21:27 23 I was going to ask you, once you parked there, if

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12:21:29 1 you -- you moved the vehicle at all, but you think
12:21:32 2 you did.

12:21:36 3 **A.** Yes.

12:21:37 4 **Q.** Okay. All right. So you're -- you're
12:21:39 5 pretty much, give or take a foot or two, directly
12:21:42 6 behind the red minivan when you first pull up and
12:21:45 7 come to a stop, and maybe about ten to 15 feet
12:21:49 8 behind it; is that fair?

12:21:51 9 **A.** I don't know exact measurements.

12:21:53 10 **Q.** Okay. How many feet would you
12:21:55 11 estimate, in your police experience, you are from
12:21:57 12 the back of the red minivan?

12:22:00 13 **A.** It's hard to tell with the angle.

12:22:01 14 **Q.** Okay. Now, as you indicated, you
12:22:04 15 do pull up pretty much directly behind the red
12:22:07 16 minivan; is that right?

12:22:09 17 **A.** Yes.

12:22:09 18 **Q.** Okay. So why did you pull up there?

12:22:10 19 **A.** To speak with Officer Moriarity, which
12:22:14 20 is what I'm doing right now.

12:22:15 21 **Q.** Okay. And do you have a recollection
12:22:16 22 of speaking with -- with Officer Moriarity?

12:22:19 23 You've already identified him because of the

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12:22:20 1 hat, but as you sit here today, do you recall that
12:22:23 2 that was indeed Officer Moriarity who walked up to
12:22:26 3 your driver's side window of patrol vehicle 473 to
12:22:29 4 talk to you?

12:22:30 5 **A.** Yes.

12:22:30 6 **Q.** Okay. What did you talk about?

12:22:32 7 **A.** I don't remember.

12:22:33 8 **Q.** Okay. Was it relating to the call or
12:22:36 9 the -- or the -- or the incident that you had
12:22:39 10 covered earlier in the week?

12:22:41 11 **A.** Most likely.

12:22:42 12 **Q.** Okay. I'm going to let this play to
12:22:44 13 the end.

12:22:45 14 Do you know who the gentleman is who's
12:22:47 15 coming around from behind the bush I'm circling
12:22:50 16 with the cursor who was talking to Officer Moriarity?

12:22:52 17 **A.** I don't know his name.

12:22:53 18 **Q.** Okay. Had you ever encountered that
12:22:55 19 person before?

12:22:55 20 **A.** It was the person I had encountered
12:22:57 21 earlier in the week.

12:22:58 22 **Q.** It was. So when you saw the address,
12:23:01 23 you said, yep, I know who this is. And you went,

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12:24:16 1 **A.** Yes.

12:24:17 2 **Q.** And would you agree that the physical
12:24:19 3 location of those two vehicles, vis-a-vis each
12:24:19 4 other, has not changed?

12:24:22 5 **A.** It doesn't --

12:24:22 6 **MS. HUGGINS:** Form.

12:24:22 7 **THE WITNESS:** It doesn't appear that they
12:24:23 8 have.

12:24:23 9 **BY MR. RUPP:**

12:24:24 10 **Q.** Okay. And then we see the vehicle
12:24:25 11 driven by Officer Moriarity pretty much parallel
12:24:31 12 to your vehicle in the -- in the sort of the center
12:24:36 13 of Schmarbeck. Do you agree?

12:24:37 14 **A.** Yes.

12:24:37 15 **Q.** Okay. We're going to watch. Now, do
12:24:40 16 you see an individual --

12:24:41 17 **A.** Yes.

12:24:41 18 **Q.** -- depicted?

12:24:42 19 And I'm circling him with the cursor. Do
12:24:45 20 you know who that person is?

12:24:46 21 **A.** James Kistner.

12:24:47 22 **Q.** Okay. And where are you at this time?

12:24:50 23 **A.** In my patrol vehicle.

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12:24:52 1 **Q.** Where is Officer Velez?

12:24:54 2 **A.** In the passenger side of the patrol

12:24:55 3 vehicle.

12:24:55 4 **Q.** Okay. Are there individuals in the

12:24:58 5 other patrol vehicle that I'm circling with the

12:25:01 6 cursor?

12:25:02 7 **A.** Yes.

12:25:02 8 **Q.** Who are they?

12:25:02 9 **A.** Officer Moriarity and Officer Schultz.

12:25:04 10 **Q.** Who's driving?

12:25:06 11 **A.** Officer Moriarity.

12:25:07 12 **Q.** Okay. And, you know, what was -- what

12:25:10 13 was your plan at this point -- if there hadn't been

12:25:12 14 an impact with Mr. Kistner, what was the plan at

12:25:15 15 this point for the four officers and the two SUVs?

12:25:18 16 **A.** We were leaving to go back in service.

12:25:21 17 It was a pretty busy day.

12:25:22 18 **Q.** Okay. And do you know if, at this

12:25:26 19 point, the 33 Schmarbeck call had been advised?

12:25:33 20 **A.** I don't believe it had been.

12:25:35 21 **Q.** Okay. But you were, nevertheless,

12:25:37 22 leaving the scene to go -- to go back in service in

12:25:41 23 C District.

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12:25:42 1 **A.** Correct.

12:25:43 2 **Q.** Okay.

12:25:43 3 **MS. HUGGINS:** Form as to the -- the previous
12:25:45 4 question.

12:25:55 5 **BY MR. RUPP:**

12:25:55 6 **Q.** All right. This is skipping, so I'm
12:25:57 7 going to back it up just a second.

12:25:59 8 All right. As we -- now, do we see the
12:26:01 9 first vehicle, driven by Officer Moriarity, pull
12:26:05 10 past Mr. Kistner?

12:26:07 11 **A.** Yes.

12:26:07 12 **MR. RUPP:** Okay. And I want to pay -- pay
12:26:11 13 particular attention to your vehicle, so I'm going
12:26:13 14 to back it up again.

12:26:13 15 (Video clip played.)

12:26:13 16 **BY MR. RUPP:**

12:26:17 17 **Q.** Your vehicle starts to back up; is that
12:26:17 18 right?

12:26:20 19 **A.** Yes.

12:26:20 20 **Q.** All right. Now, in that process of
12:26:24 21 backing up however many feet that was from behind
12:26:26 22 the red SUV, that was the time frame that you told
12:26:29 23 me, in some detail earlier, that you had checked

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12:26:32 1 your left side-view mirror, your right side-view
12:26:35 2 mirror, your rearview mirror, and you had turned
12:26:38 3 around to the back to prepare to back up; is that
12:26:43 4 right?

12:26:43 5 **A.** That's what I would normally do.

12:26:44 6 **Q.** Okay. And as you backed up, where
12:26:47 7 would you normally be looking?

12:26:52 8 **A.** At that exact moment, I don't --

12:26:53 9 **Q.** Yeah. As you're -- as you're
12:26:56 10 physically moving the SUV backwards, where are you
12:26:58 11 looking?

12:26:58 12 **A.** I don't remember exactly where I was
12:27:00 13 looking.

12:27:00 14 **Q.** Well, are you looking in one of those
12:27:03 15 three mirrors or turned around behind you to look?

12:27:05 16 **A.** I don't remember.

12:27:05 17 **Q.** Okay. Well, when you customarily back
12:27:08 18 up, do you look out the windshield when you're
12:27:10 19 backing up, or do you look at a mirror or behind
12:27:12 20 you?

12:27:12 21 **A.** It would depend.

12:27:14 22 **Q.** Okay. What would it depend on?

12:27:15 23 **A.** It would depend if I was exiting

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12:27:18 1 a driveway, if I was in a parking lot. It would --

12:27:21 2 Q. All right. So let's put the additional
12:27:23 3 condition that you're backing up on the street.

12:27:25 4 A. Okay.

12:27:25 5 Q. All right. Where are you looking?

12:27:27 6 A. Considering I had already looked behind
12:27:30 7 me and there was clearly nothing there, it's
12:27:32 8 possible I was looking behind me, it's possible
12:27:34 9 I was looking in front of me.

12:27:36 10 Q. So you don't know one way or the other?

12:27:38 11 A. I do not remember.

12:27:39 12 Q. Okay. So where I have it frozen at the
12:27:44 13 seven-second mark on the video segment marked 2529,
12:27:48 14 Mr. Kistner is approximately six feet from the
12:27:51 15 front left bumper of the SUV.

12:27:54 16 Would you agree with me on the estimate, or
12:27:56 17 do you want to provide a different estimate?

12:27:58 18 A. I don't know the estimate.

12:27:58 19 Q. Okay. Well, you -- you're -- have you
12:28:01 20 taken any courses in accident reconstruction, as
12:28:03 21 a police officer?

12:28:03 22 A. No.

12:28:04 23 Q. Do you ever fill out police reports for

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12:28:07 1 car accidents?

12:28:07 2 **A.** Yes.

12:28:08 3 **Q.** And have you ever had to estimate
12:28:11 4 distances of vehicles traveling or where they ended
12:28:13 5 up from the point of collision?

12:28:16 6 **A.** We -- no, I don't put the distance in
12:28:20 7 a report, because I was not -- if I -- if I'm not
12:28:24 8 present for an accident, I can't determine that.

12:28:26 9 **Q.** Have you ever received any training on
12:28:28 10 estimating speed?

12:28:31 11 **A.** Yes.

12:28:31 12 **Q.** Okay. Have you received any estimates
12:28:33 13 on -- any training on estimating distances?

12:28:37 14 **A.** It may have been in radar training, but
12:28:40 15 I don't recall exactly.

12:28:42 16 **Q.** Okay. So as you sit here, you cannot
12:28:44 17 estimate for me how many feet Mr. Kistner is from
12:28:46 18 the front left driver's side bumper of patrol
12:28:52 19 vehicle 473?

12:28:53 20 **A.** Due to the angle, I definitely cannot.

12:28:56 21 **MR. RUPP:** Okay. All right. So, and I'm
12:29:00 22 going to go back. We'll go up to the seven-second
12:29:03 23 mark again.

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12:29:03 1 (Video clip played.)

12:29:03 2 **BY MR. RUPP:**

12:29:09 3 Q. Your vehicle backs up, four, five, six,
12:29:15 4 seven. Now it begins to pull forward; is that
12:29:17 5 correct?

12:29:17 6 A. Yes.

12:29:18 7 Q. Now, earlier you told me that you were
12:29:20 8 not sure whether your vehicle was still moving
12:29:24 9 forward at the time of the impact with Mr. Kistner,
12:29:28 10 despite having seen the videos yesterday; is that
12:29:30 11 right?

12:29:30 12 A. Yes.

12:29:31 13 Q. All right. I want you to watch this
12:29:33 14 closely and tell me if you can tell from the video
12:29:36 15 whether your vehicle is, in fact, still moving
12:29:38 16 forward at the time of the impact with Mr. Kistner.

12:29:52 17 Can you answer the question?

12:29:54 18 A. What's the question?

12:29:55 19 Q. The question was: Was your vehicle, in
12:29:58 20 fact, still moving forward at the precise moment of
12:30:01 21 the impact with Mr. Kistner?

12:30:04 22 A. I don't remember the vehicle to have
12:30:06 23 been moving.

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12:33:06 1 of the vehicle. That's not where he made contact
12:33:09 2 with the vehicle.

12:33:10 3 **MR. RUPP:** Okay. So let me back up here
12:33:14 4 a little bit. I want you to look at Mr. Kistner's
12:33:17 5 head. Okay?

12:33:17 6 (Video clip played.)

12:33:17 7 **BY MR. RUPP:**

12:33:21 8 **Q.** Can you see his head?

12:33:22 9 **A.** Yes.

12:33:23 10 **Q.** Okay. Now, did you see his head fly
12:33:26 11 backwards?

12:33:27 12 **A.** I wouldn't say fly backwards.

12:33:29 13 **Q.** Well, did you see it move backwards?

12:33:31 14 **A.** It appears to.

12:33:33 15 **Q.** Okay. What caused that?

12:33:34 16 **MS. HUGGINS:** Form.

12:33:36 17 **BY MR. RUPP:**

12:33:36 18 **Q.** I mean, you were there, right, Officer
12:33:40 19 McDermott?

12:33:40 20 **A.** Yes.

12:33:40 21 **Q.** What caused Mr. Kistner's head to go
12:33:42 22 back like that?

12:33:43 23 **A.** He threw himself backwards.

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12:33:44 1 **Q.** Okay. So he simultaneously threw

12:33:46 2 himself at the car and threw his head backwards?

12:33:49 3 **A.** He walked towards the car, reached his

12:33:52 4 arm out, threw himself into the vehicle and

12:33:58 5 backwards.

12:33:59 6 **Q.** Okay. So that was all him, according

12:34:02 7 to your testimony.

12:34:05 8 **A.** Yes.

12:34:05 9 **Q.** Okay. So he touched the vehicle and

12:34:07 10 then swung his head backwards and fell to the

12:34:11 11 ground.

12:34:11 12 **MS. HUGGINS:** Form. You can answer.

12:34:12 13 **THE WITNESS:** He reached his arm out -- I

12:34:17 14 don't know if he touched the vehicle or not, but he

12:34:19 15 reached his arm out, turned his body, and then

12:34:23 16 threw himself backwards.

12:34:24 17 **BY MR. RUPP:**

12:34:24 18 **Q.** Okay. So you're not sure that he

12:34:27 19 impacted the vehicle at all?

12:34:29 20 **A.** Yes, he did.

12:34:30 21 **Q.** Well, you said you weren't sure.

12:34:32 22 I wasn't sure what you just said.

12:34:34 23 **A.** When he reached his arm out and touched

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12:34:36 1 closer to the front of the vehicle, if he touched
12:34:39 2 it closer to the front of vehicle, I don't know.

12:34:41 3 What I'm saying is is his arm is not -- his
12:34:47 4 body touched the mirror, not the front of the
12:34:51 5 vehicle.

12:34:52 6 Q. Right. But you're saying that he
12:34:57 7 touched the mirror himself and then flung his head
12:35:00 8 back.

12:35:01 9 A. Yes.

12:35:01 10 Q. Okay. And when that happened, would
12:35:04 11 you agree with me, the SUV was still moving
12:35:07 12 forward?

12:35:11 13 Let's watch it again. I'll back it up all
12:35:21 14 the way.

12:35:31 15 Okay. Would you agree with me that the
12:35:33 16 vehicle was still moving forward as, as you've
12:35:38 17 described, he touched the vehicle?

12:35:41 18 MS. HUGGINS: Form.

12:35:42 19 THE WITNESS: It appears to be. I don't
12:35:43 20 remember the vehicle moving forward.

12:35:45 21 MR. RUPP: What's the form objection?

12:35:53 22 MS. HUGGINS: I think there's been a lot of
12:35:54 23 discussion about impact and when and where that

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12:35:56 1 happened.

12:35:57 2 **MR. RUPP:** Well, I think --

12:35:58 3 **MS. HUGGINS:** I think the question is
12:35:59 4 confusing.

12:36:00 5 **MR. RUPP:** All right. So I'm not -- were
12:36:02 6 you confused by my question?

12:36:04 7 **THE WITNESS:** A little bit, yeah.

12:36:06 8 **BY MR. RUPP:**

12:36:07 9 **Q.** All right. So what I think you've told
12:36:08 10 me is that Mr. Kistner came around the front of the
12:36:11 11 vehicle, and he reached out at some point, and he
12:36:14 12 made contact with the vehicle, and he flung his
12:36:17 13 head back, as -- as you saw in the video, correct?

12:36:20 14 **A.** He came around to the side of the
12:36:21 15 vehicle.

12:36:21 16 **Q.** Okay. Came around the front, to the
12:36:23 17 side, right?

12:36:24 18 **A.** Well, he was already on the side --

12:36:24 19 **Q.** Okay.

12:36:27 20 **A.** -- once he walked past the other
12:36:30 21 vehicle.

12:36:30 22 **Q.** So he's coming up to the side of the
12:36:32 23 vehicle, and you say that he -- he impacted the

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12:36:34 1 vehicle and -- and flung his head back and turned
12:36:38 2 at the same time; is that right?

12:36:39 3 **A.** Yes.

12:36:39 4 **Q.** Okay. And my only question to you is:
12:36:41 5 Through that process, was your vehicle still moving
12:36:44 6 forward?

12:36:45 7 So I'm going to play --

12:36:47 8 **A.** I don't -- I don't -- I don't remember
12:36:50 9 my vehicle moving forward.

12:36:52 10 **MR. RUPP:** Well, I'm going to ask you to
12:36:53 11 watch. I'm not asking you what you remember. I'm
12:36:55 12 asking you to watch on the video, assume that this
12:36:57 13 video is accurate, okay, and you tell me that based
12:37:00 14 on when you just told me Mr. Kistner initiated the
12:37:02 15 contact with the vehicle, whether your vehicle was
12:37:05 16 moving or stationary. That's what I want to know.
12:37:08 17 Okay?

12:37:08 18 (Video clip played.)

12:37:08 19 **BY MR. RUPP:**

12:37:26 20 **Q.** Can you answer the question?

12:37:27 21 **A.** It appears to be slightly moving.

12:37:28 22 **Q.** Okay. Now, Mr. Kistner ended up on the
12:37:54 23 ground; is that right?

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12:37:56 1 **A.** Yes.

12:37:56 2 **Q.** Do you know why?

12:37:57 3 **A.** Because he put himself there.

12:37:59 4 **Q.** Okay. So I -- I just -- that's what
12:38:02 5 I wanted to make sure. He approached the side of
12:38:04 6 the vehicle, deliberately made contact with it,
12:38:08 7 flung his head back, turned, and then fell to the
12:38:11 8 ground.

12:38:12 9 **A.** The turn was before he threw himself
12:38:15 10 backward.

12:38:15 11 **Q.** Maybe I had it in the wrong order.
12:38:17 12 He approached the side of the vehicle,
12:38:19 13 touched it, turned, flung his head back, and fell
12:38:24 14 to the ground. Is that your testimony?

12:38:25 15 **A.** He did make contact with the vehicle.

12:38:26 16 **Q.** Sure.

12:38:27 17 **A.** But yes.

12:38:27 18 **Q.** Okay. And all of that, in your view,
12:38:29 19 was intentional on his part; is that right?

12:38:31 20 **A.** Yes.

12:38:31 21 **Q.** And none of that had anything to do
12:38:33 22 with your pulling away, intending to leave
12:38:38 23 Schmarbeck that day.

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12:38:39 1 **A.** No.

12:38:50 2 **Q.** And when in this process was the first
12:38:52 3 time that you saw Mr. Kistner approaching the side
12:38:54 4 of your vehicle?

12:38:59 5 **A.** The first time I saw him approaching my
12:39:01 6 vehicle was after the first vehicle had pulled
12:39:04 7 away.

12:39:05 8 **Q.** Okay. So let's -- let's move there on
12:39:08 9 the screen.

12:39:08 10 So the first vehicle's pulling away now,
12:39:10 11 right? And I've frozen it. We're at the
12:39:13 12 five-second mark. Your vehicle is backing up.
12:39:17 13 Do you see Mr. Kistner at this point?

12:39:19 14 **A.** Yes.

12:39:19 15 **Q.** Okay. If you see Mr. Kistner
12:39:22 16 approaching the side of your vehicle, why do you
12:39:24 17 pull forward?

12:39:25 18 **A.** I saw him there. I didn't -- I didn't
12:39:31 19 know why someone would be approaching a moving
12:39:34 20 vehicle in the middle of the road.

12:39:36 21 **Q.** Well, I mean, by the time he's in the
12:39:39 22 middle of the road, the vehicles are stationary,
12:39:42 23 right?

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12:40:40 1 **A.** But I don't know that he wasn't just
12:40:44 2 crossing the street.

12:40:45 3 **Q.** But that's not my question. I'm just
12:40:47 4 asking, as of reference to a starting point, you
12:40:49 5 would agree he's three-quarters of the way across
12:40:51 6 the street, he's facing opposite direction of your
12:40:54 7 SUVs. He's facing towards them, right?

12:40:56 8 **A.** He's not --

12:40:56 9 **A.** You said opposite direction of the SUV.

12:40:59 10 **Q.** Yeah. Your SUV is phasing I think you
12:41:02 11 said north, right?

12:41:02 12 **A.** Yes.

12:41:02 13 **Q.** Which would mean that he's facing
12:41:05 14 south, right?

12:41:05 15 **A.** Right.

12:41:05 16 **Q.** Okay. He's not facing to the west, as
12:41:08 17 if he's crossing the street, would you agree with
12:41:10 18 me?

12:41:10 19 **A.** He --

12:41:10 20 **Q.** And that's not his direction of motion
12:41:12 21 either.

12:41:13 22 **A.** But you can't go backwards from where
12:41:15 23 he is. I don't -- I don't know, from this video,

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12:41:17 1 that he wasn't walking west.

12:41:18 2 Q. Fair enough. But at least -- I'm only
12:41:21 3 asking you about this video. Okay?

12:41:22 4 A. I understand that, but --

12:41:23 5 Q. At this point, at 01 -- at the 0 mark
12:41:25 6 and the 01 mark, he's walking southbound on
12:41:28 7 Schmarbeck, according to the compass directions you
12:41:30 8 gave me; is that right?

12:41:31 9 A. He's, I would say, southwest, but also
12:41:35 10 now he's walking south.

12:41:36 11 Q. Okay. He's not crossing the street,
12:41:39 12 right?

12:41:40 13 Now he walks towards your vehicle when he's
12:41:42 14 struck, correct?

12:41:43 15 A. He's not struck.

12:41:44 16 Q. Okay. And so if, as you just told me
12:41:50 17 a minute ago, you saw Mr. Kistner after the first
12:41:55 18 SUV moved away, why did you continue to move
12:41:59 19 forward?

12:42:01 20 A. I don't recall.

12:42:03 21 Q. Well, the man was approaching your
12:42:07 22 vehicle, was he not?

12:42:09 23 A. But at --

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12:42:10 1 **Q.** As we've frozen it at 06, he's now not
12:42:15 2 walking southwest. He's walking southeast, towards
12:42:17 3 your vehicle, which is to the southeast of him,
12:42:19 4 correct?

12:42:19 5 **MS. HUGGINS:** Form.

12:42:20 6 **THE WITNESS:** At the time that I -- he had
12:42:21 7 started walking in that direction, I was already
12:42:23 8 backing up and had started, like I -- I was going
12:42:27 9 to proceed forward.

12:42:28 10 **BY MR. RUPP:**

12:42:28 11 **Q.** Well, that's right. You were looking
12:42:30 12 out the back or in the side view and rearview
12:42:33 13 mirrors, correct.

12:42:34 14 **A.** No, not necessarily.

12:42:35 15 **Q.** Well, you weren't looking in two
12:42:36 16 different places at the same time. We already
12:42:38 17 covered that, didn't we, Officer?

12:42:39 18 **A.** Yes, but we also covered that I would
12:42:42 19 have checked behind me, and when I was actually
12:42:45 20 moving forward, I don't know what direction I was
12:42:46 21 looking.

12:42:47 22 **Q.** Okay. But you saw Mr. Kistner. You
12:42:49 23 just told me you saw the man, right?

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12:42:51 1 **A.** Yes.

12:42:51 2 **Q.** So why did you pull forward?

12:42:52 3 **A.** I don't remember.

12:42:53 4 **Q.** Well, weren't you worried you might hit

12:42:55 5 him?

12:42:56 6 **A.** I didn't think that someone would walk

12:42:59 7 intentionally directly at a moving vehicle.

12:43:00 8 **Q.** But if you saw him --

12:43:01 9 **A.** In the middle of the road.

12:43:02 10 **Q.** If you saw him and he's in the middle

12:43:04 11 of the road and he's walking towards your vehicle,

12:43:06 12 you could have stopped, right?

12:43:07 13 **MS. HUGGINS:** Form.

12:43:10 14 **THE WITNESS:** I stopped as quickly as

12:43:11 15 I could.

12:43:11 16 **BY MR. RUPP:**

12:43:11 17 **Q.** Okay. Well, if you saw him when he --

12:43:14 18 after the first SUV pulled -- pulled away, you

12:43:16 19 didn't even have to go forward at all.

12:43:19 20 **A.** Based on the video, that's when I saw

12:43:21 21 him. I don't remember when I actually saw him

12:43:24 22 first.

12:43:24 23 **Q.** Okay. So you're --

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12:43:25 1 **A.** I mean, I saw him coming down the
12:43:27 2 sidewalk, but the video doesn't show that.

12:43:29 3 **Q.** All right. So when you told me that
12:43:30 4 you didn't see him until the first SUV pulled away,
12:43:33 5 now you're not sure that's when you first saw him.

12:43:33 6 **MS. HUGGINS:** Form.

12:43:36 7 **THE WITNESS:** Based on watching the video.
12:43:37 8 But I don't remember when I -- that day, when
12:43:39 9 I first saw him.

12:43:39 10 **BY MR. RUPP:**

12:43:39 11 **Q.** So you might not have seen him when you
12:43:41 12 pulled the vehicle forward.

12:43:42 13 **A.** I don't remember the very moment I saw
12:43:44 14 him.

12:43:44 15 **Q.** Right. So --

12:43:45 16 **A.** I saw him before --

12:43:46 17 **Q.** -- it's possible then that you pulled
12:43:48 18 the vehicle forward without having seen Mr. Kistner.

12:43:51 19 **A.** No. I saw him prior to the other car
12:43:54 20 pulling away.

12:43:55 21 **Q.** Well, now, wait a second. That was
12:43:57 22 earlier. You told me, in this segment, that you
12:44:00 23 didn't see him until after the other vehicle pulled

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12:44:03 1 away. You just told me that.

12:44:05 2 **MS. HUGGINS:** Form. Are you referring to
12:44:07 3 video segments or her experience that day during --

12:44:07 4 **MR. RUPP:** I'm only referring to --

12:44:10 5 **MS. HUGGINS:** -- the call?

12:44:11 6 **MR. RUPP:** -- video segments.

12:44:12 7 **MS. HUGGINS:** Okay.

12:44:13 8 **MR. RUPP:** And when I asked her: When was
12:44:14 9 the first time you saw Mr. Kistner approaching your
12:44:17 10 vehicle, you said it was not until after the first
12:44:20 11 SUV pulled away.

12:44:21 12 **THE WITNESS:** Then I must have --

12:44:22 13 **MS. HUGGINS:** In the video segment.

12:44:23 14 **THE WITNESS:** In the video segment?

12:44:25 15 **BY MR. RUPP:**

12:44:25 16 **Q.** In this video segment.

12:44:29 17 **A.** Then I --

12:44:29 18 **Q.** Yes.

12:44:30 19 **A.** -- misunderstood earlier.

12:44:32 20 **Q.** Okay. So when did you first see Mr. --
12:44:32 21 let's go through it again.

12:44:33 22 When did you first see Mr. Kistner at all
12:44:35 23 that day?

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12:44:35 1 **A.** The first time I saw him at all was
12:44:37 2 when he was on the sidewalk.

12:44:38 3 **Q.** Okay. When is the first time you saw
12:44:40 4 him in the street that day, in Schmarbeck?

12:44:45 5 **A.** I don't remember exactly when I saw him
12:44:47 6 moving across the street.

12:44:49 7 **Q.** Okay. Well, when is -- when is the
12:44:50 8 first time you knew he was in the street at all?

12:44:53 9 **A.** I don't remember.

12:44:54 10 **Q.** Well, when is the first time you saw
12:44:57 11 him in the street before you hit him with the SUV?

12:45:00 12 **A.** I didn't hit him with the SUV.

12:45:02 13 **Q.** When is the first time you saw him
12:45:03 14 before there was contact between Mr. Kistner and
12:45:07 15 the SUV?

12:45:07 16 **A.** Are you asking what I remember and what
12:45:10 17 I can see in the video?

12:45:11 18 **Q.** I'm asking what you remember. I want
12:45:13 19 to know whether you saw him before there was
12:45:15 20 contact with your SUV.

12:45:16 21 **A.** I saw him -- like I said, I saw him on
12:45:18 22 the sidewalk and --

12:45:19 23 **Q.** When was the first time you saw him in

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12:45:21 1 the street --

12:45:21 2 A. I don't remember.

12:45:21 3 Q. -- Ms. McDermott? Okay.

12:45:24 4 So you don't remember whether you saw him or

12:45:27 5 not in the street.

12:45:28 6 A. I saw him. I don't remember at what
12:45:30 7 moment I first saw him, which is --

12:45:30 8 Q. So it might have --

12:45:31 9 A. -- what you asked.

12:45:32 10 Q. -- been after you started pulling
12:45:34 11 forward.

12:45:34 12 A. I don't remember.

12:45:35 13 Q. Okay. Well, you don't remember either
12:45:36 14 way.

12:45:36 15 A. I -- I don't remember the exact moment
12:45:38 16 I first saw him in the street, no.

12:45:40 17 Q. Okay. So it may have been after you
12:45:42 18 were already pulling the SUV forward.

12:45:45 19 A. I -- I don't remember the time.

12:45:47 20 Q. Okay. But that means that you don't
12:45:49 21 remember the time, it could have been after you
12:45:53 22 started pulling the SUV forward after backing it
12:45:55 23 up.

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12:45:59 1 **A.** I don't -- I don't remember.
12:45:59 2 **Q.** Okay. So it's possible then, if you
12:46:01 3 don't remember, that you didn't see Mr. Kistner at
12:46:04 4 all before there was impact with your SUV.
12:46:06 5 **A.** I -- I did see him. I told you
12:46:09 6 earlier, I saw him coming at my vehicle.
12:46:10 7 **Q.** Okay. When? In the street or on the
12:46:12 8 sidewalk?
12:46:14 9 **A.** In the street.
12:46:15 10 **Q.** Okay. When is the first time you saw
12:46:17 11 him?
12:46:17 12 **A.** I don't remember the first time I saw
12:46:19 13 him. I do -- but I do remember him coming at the
12:46:22 14 vehicle.
12:46:22 15 **Q.** Okay.
12:46:22 16 **A.** But I don't know if I could have looked
12:46:25 17 away, looked back. That's what I'm explaining.
12:46:27 18 **Q.** Let's try it this way: How long before
12:46:30 19 the impact was it that you saw Mr. Kistner?
12:46:31 20 **A.** For the very first time?
12:46:33 21 **Q.** In the street.
12:46:34 22 **A.** In the street?
12:46:35 23 **Q.** Not on the sidewalk. That's why I'm

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12:46:38 1 directing you to this video segment. It's at
12:46:41 2 000 -- I want to make sure we don't get confused
12:46:43 3 here.

12:46:44 4 We are at 00 on this video, and Mr. Kistner
12:46:46 5 is already in the street, right?

12:46:47 6 **A.** What I'm -- what I'm explaining is
12:46:50 7 there would have been a gap between when the first
12:46:55 8 patrol vehicle pulled away. I can't see through
12:46:58 9 the patrol vehicle, so I would not have seen
12:47:00 10 Mr. Kistner's exact location when they pulled away.

12:47:03 11 **Q.** Right. So, but they haven't pulled
12:47:06 12 away yet. We're at 00. They haven't pulled away.

12:47:08 13 So based on what you just told me, you
12:47:10 14 haven't seen him yet, correct? You couldn't see
12:47:13 15 him, so you haven't seen him.

12:47:15 16 **A.** Have I seen him? Yes, I've seen him.

12:47:16 17 **Q.** In the street?

12:47:17 18 **A.** I don't remember if I've seen him in
12:47:18 19 the street. At what point the first time I saw him
12:47:21 20 in the street.

12:47:22 21 **Q.** Okay. And, again, so that means it
12:47:23 22 could have been after you started pulling forward.

12:47:25 23 **A.** I don't remember.

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12:47:26 1 **Q.** Okay. All right. So let's watch
12:47:31 2 a little bit more of the segment after the impact
12:47:37 3 between your SUV and Mr. Kistner's vehicle.

12:47:42 4 Now, you've told me that you saw him reach
12:47:47 5 out his arm, deliberately impact the vehicle, turn,
12:47:51 6 fling his head back, and then fall to the ground;
12:47:54 7 is that right?

12:47:54 8 **A.** Yes.

12:47:54 9 **Q.** Did you see all of that before you saw
12:47:58 10 the video segments?

12:47:59 11 Is that what you saw when the -- when the
12:48:02 12 incident occurred?

12:48:02 13 **A.** Yes.

12:48:02 14 **Q.** Or was that what you saw later?

12:48:04 15 **A.** That's what I saw that day.

12:48:05 16 **Q.** Okay. So you did see him, then, before
12:48:07 17 the impact.

12:48:09 18 **A.** I said that I did.

12:48:10 19 **Q.** Okay. You're just not sure when.

12:48:13 20 **A.** I'm -- you asked when the first time
12:48:15 21 I saw him enter the street.

12:48:17 22 **Q.** Yes.

12:48:18 23 **A.** That, I don't remember the very first

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12:48:20 1 time or how many times I would have looked at him,
12:48:23 2 looked away.

12:48:23 3 Q. Let's try it this way: How far away
12:48:26 4 was he the first time you saw him in the street?

12:48:28 5 A. I don't remember.

12:48:29 6 Q. Okay. How much time was it between the
12:48:33 7 first time you saw him in the street and the time
12:48:36 8 your SUV impacted with him?

12:48:38 9 A. I don't remember.

12:48:54 10 Q. Okay. All right. Another individual
12:48:55 11 walked into the screen at approximately the 15-,
12:48:58 12 16-second mark. Do you know who that person is?

12:49:00 13 A. I believe it's Mr. Kistner's son.

12:49:02 14 Q. When is the first time you knew that
12:49:05 15 was Mr. Kistner's son?

12:49:07 16 A. On scene. I don't remember exactly
12:49:10 17 when I -- he may have referred to him as dad.

12:49:13 18 Q. Now, there's officers approaching from
12:49:17 19 what would be to the north on Scharmbbeck, walking
12:49:21 20 back to the south. Do you see that?

12:49:24 21 A. Yes.

12:49:24 22 Q. All right. Who are they?

12:49:25 23 A. Officers Schultz and Moriarity.

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12:49:27 1 **Q.** Okay. Which one is on the left and
12:49:30 2 which one is on the right in the screen?

12:49:32 3 **A.** Officer Schultz is more towards the
12:49:35 4 middle of the street.

12:49:37 5 **Q.** Okay. Now, at this point, have -- has
12:49:41 6 anybody gotten out of your SUV?

12:49:44 7 **A.** I would have to watch it back. I can't
12:49:46 8 tell if the door opened or not.

12:49:48 9 **MR. RUPP:** Okay. Let's go back.

12:49:48 10 (Video clip played.)

12:49:48 11 **BY MR. RUPP:**

12:50:07 12 **Q.** All right. So at approximately the
12:50:08 13 21-second mark, we see the passenger side door of
12:50:11 14 patrol vehicle 473, where Ms. Velez was sitting,
12:50:15 15 open; is that right?

12:50:16 16 **A.** Yes.

12:50:16 17 **Q.** Okay. Has your vehicle door opened?

12:50:19 18 **A.** It's hard to say.

12:50:21 19 **Q.** Do you know whether or not you -- did
12:50:23 20 you ever get out of the SUV?

12:50:24 21 **A.** I did.

12:50:25 22 **Q.** Okay. Did you get out before or after
12:50:28 23 Officer Velez opened her door?

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12:50:30 1 **A.** I don't remember at what point I got
12:50:32 2 out. It's hard to tell with the angle of the
12:50:35 3 video.

12:50:37 4 **Q.** Okay. So those are two different
12:50:38 5 things. One is you don't remember; two is you
12:50:41 6 can't tell from the video. So do you --

12:50:43 7 **A.** Well, but you're asking about my memory
12:50:45 8 that day, but, and then also I'm -- I'm watching
12:50:47 9 the video, but I don't -- I don't remember at what
12:50:51 10 point I got out.

12:50:52 11 **Q.** Okay. And you can't tell what time you
12:50:53 12 got out.

12:50:54 13 **A.** If you keep playing the video, it might
12:50:56 14 show it. I don't know.

12:50:57 15 **MR. RUPP:** All right. Let's see.

12:50:57 16 (Video clip played.)

12:50:57 17 **BY MR. RUPP:**

12:50:58 18 **Q.** So Officer Velez gets out, closes her
12:51:00 19 door, right?

12:51:01 20 **A.** Yeah. I just --

12:51:02 21 **Q.** Is your door open?

12:51:03 22 **A.** I had gotten out already.

12:51:04 23 **Q.** Okay. How do you know that?

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12:51:05 1 **A.** If -- you can see it --
12:51:05 2 **Q.** Okay.
12:51:06 3 **A.** -- in the video.
12:51:07 4 **Q.** Okay. Go ahead and tell me where.
12:51:09 5 At the 20-second mark, when Earl runs into
12:51:12 6 the street, is your door open yet?
12:51:14 7 **A.** No.
12:51:14 8 **Q.** Her door opens. When is --
12:51:16 9 **A.** Right there.
12:51:17 10 **Q.** Okay. So that's at the -- we'll go
12:51:19 11 back.
12:51:19 12 **A.** Maybe 23, 24.
12:51:23 13 **MR. RUPP:** All right. Let's play it.
12:51:23 14 (Video clip played.)
12:51:34 15 **THE WITNESS:** Right there.
12:51:34 16 **BY MR. RUPP:**
12:51:34 17 **Q.** 23. Okay.
12:51:36 18 So where is Mr. Kistner's body lying as you
12:51:39 19 get out of the SUV?
12:51:41 20 **A.** On the ground.
12:51:41 21 **Q.** Okay. Where relative to your door?
12:51:44 22 **A.** Far enough away that I could step out.
12:51:46 23 **Q.** Okay. And the door, did the door --

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12:51:49 1 did you open it fully?

12:51:50 2 Did it clear his body as he was lying on the
12:51:53 3 street?

12:51:53 4 A. I don't remember.

12:51:54 5 Q. Okay. If you had opened the door
12:51:56 6 fully, would it have been over -- any part of it
12:51:58 7 been over Mr. Kistner's body?

12:51:59 8 A. I don't remember.

12:52:00 9 Q. Okay. But you were able to get out of
12:52:02 10 your vehicle unobstructed by his body?

12:52:04 11 A. Yes.

12:52:04 12 Q. Okay. Did you say anything to
12:52:06 13 Mr. Kistner?

12:52:07 14 A. I believe I told him to get up.

12:52:10 15 Q. How did you know whether he was injured
12:52:12 16 or not at that point?

12:52:14 17 A. I don't remember.

12:52:16 18 Q. Well, that's not a question you would
12:52:18 19 remember. If you told him to get up right away,
12:52:21 20 how -- what if he had sustained a spinal injury?

12:52:24 21 MS. HUGGINS: Form.

12:52:25 22 THE WITNESS: I remember him rolling back
12:52:31 23 and forth, and I didn't see any outward physical

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12:52:37 1 injuries.

12:52:37 2 **BY MR. RUPP:**

12:52:37 3 Q. Let me ask you about your police
12:52:39 4 training and police procedures.

12:52:40 5 Are -- are you told that -- to tell people
12:52:44 6 who have been in an impact or a collision with a
12:52:47 7 vehicle to -- to rise to their feet before you've
12:52:51 8 assessed whether they're injured or not?

12:52:53 9 A. This was the first time I had someone
12:52:55 10 intentionally put themselves into my patrol
12:52:58 11 vehicle, so --

12:52:59 12 Q. You would agree with me that somebody
12:53:01 13 who intentionally did that could injure themselves,
12:53:04 14 right?

12:53:04 15 A. You could.

12:53:05 16 Q. So whether you struck him or he struck
12:53:07 17 the SUV, he could be injured, right?

12:53:09 18 A. He could.

12:53:09 19 Q. All right. So what does your police
12:53:12 20 procedures and training tell you to do when
12:53:14 21 somebody's been injured or might be injured in an
12:53:16 22 impact between a vehicle and a pedestrian?

12:53:19 23 A. It would depend on the situation.

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12:53:20 1 **Q.** Well, no. The -- the -- well, all right.
12:53:24 2 So a vehicle has struck a pedestrian or
12:53:26 3 a pedestrian has struck a vehicle and is lying in
12:53:30 4 the street. Does any part of your police training
12:53:32 5 at ECC or with the BPD, after you became an officer,
12:53:35 6 tell you that you just tell the person to get up?

12:53:39 7 **A.** It would be discretionary.

12:53:41 8 **Q.** Okay. Is that part of your training
12:53:43 9 that it's discretionary for you to decide to tell
12:53:45 10 somebody to get up before you know whether they're
12:53:48 11 injured or not?

12:53:48 12 **MS. HUGGINS:** Form.

12:53:48 13 **THE WITNESS:** I don't know what the exact
12:53:50 14 verbiage in a training would be.

12:53:52 15 **BY MR. RUPP:**

12:53:52 16 **Q.** Well, what -- what training segment did
12:53:54 17 you take that told you that it's okay to tell
12:53:56 18 somebody to rise to their feet, after there's been
12:53:59 19 a pedestrian/vehicle incident, before you've
12:54:01 20 assessed whether they're injured?

12:54:03 21 **MS. HUGGINS:** Form.

12:54:03 22 **THE WITNESS:** It would be a fairly normal
12:54:05 23 question to ask if someone can get up.

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13:05:59 1 **Q.** And he's trying to look around the SUV?

13:06:01 2 **A.** Yes.

13:06:02 3 **Q.** Okay. And now we see the two officers
13:06:05 4 returning, Moriarity and Schultz; is that right?

13:06:07 5 **A.** Yes.

13:06:07 6 **Q.** You're -- you're out of the vehicle.

13:06:10 7 Officer Velez is out of the vehicle.

13:06:12 8 Now, Earl departs and goes back onto the
13:06:15 9 sidewalk. Would you agree?

13:06:18 10 **A.** Yes.

13:06:18 11 **Q.** And do you know if -- if he either
13:06:20 12 called or arranged to have a relative at
13:06:22 13 37 Schmarbeck call for an ambulance at that time?

13:06:27 14 **A.** I know, based on the call logs, that
13:06:29 15 someone called.

13:06:31 16 **Q.** Okay. And that was the call that was
13:06:34 17 canceled by Officer Schultz, right?

13:06:36 18 **MS. HUGGINS:** Form.

13:06:37 19 **THE WITNESS:** I believe so.

13:06:38 20 **BY MR. RUPP:**

13:06:39 21 **Q.** Okay. And we see the officers all kind
13:06:46 22 of huddled around the passenger -- or the driver's
13:06:48 23 side door of patrol vehicle 473.

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13:06:53 1 Do you remember anything that anyone said
13:06:55 2 other than you saying to Mr. Kistner that he should
13:06:59 3 get up?

13:07:01 4 A. I don't recall the exact conversation.

13:07:03 5 Q. Okay. But I -- I know you're not going
13:07:06 6 to recall the exact conversation, but I want to
13:07:08 7 make sure my question's clear.

13:07:10 8 Do you remember any snippets of that
13:07:12 9 conversation or anything that anyone said,
13:07:14 10 including Mr. Kistner, to anyone else beyond you
13:07:16 11 saying to Mr. Kistner: Get up?

13:07:17 12 A. I don't remember.

13:07:18 13 Q. Okay. All right. Now, Mr. Kistner is
13:07:22 14 being walked -- who are the officers we see in the
13:07:25 15 scene there?

13:07:26 16 Who is closest to the pole on Schmarbeck
13:07:29 17 that I'm -- which officer is this officer?

13:07:32 18 A. I believe it's Officer Moriarity.

13:07:33 19 Q. Okay. And which officer is this
13:07:35 20 officer?

13:07:36 21 A. In the middle?

13:07:37 22 Q. Yes.

13:07:38 23 A. Officer Schultz.

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13:07:40 1 **Q.** And which officer is this officer?

13:07:42 2 **A.** I believe that's me.

13:07:43 3 **Q.** Okay. And that leaves Ms. Velez --

13:07:49 4 **A.** Yes.

13:07:49 5 **Q.** -- back at the 473 vehicle; is that

13:07:54 6 right?

13:07:54 7 **A.** Yes.

13:07:55 8 **Q.** Okay. Now, is Mr. -- is Mr. Kistner

13:07:59 9 under arrest at this point?

13:08:01 10 **A.** At this point he was being detained.

13:08:04 11 **Q.** All right. Well, has he been read his

13:08:07 12 rights?

13:08:08 13 **A.** I don't remember.

13:08:09 14 **Q.** Okay. He's been cuffed, right?

13:08:11 15 **A.** He's been cuffed.

13:08:13 16 **Q.** Okay. But -- but he's detained but --

13:08:15 17 but not under arrest. I don't -- and I don't know

13:08:16 18 the difference, so maybe you'll have to clarify

13:08:20 19 that for me.

13:08:21 20 **A.** I -- I don't remember exactly what -- I

13:08:26 21 don't remember exactly.

13:08:27 22 **Q.** Well, by this point, you've already

13:08:28 23 told me, and we went through this in some detail,

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13:08:32 1 you've already concluded that this man flung
13:08:35 2 himself deliberately at your SUV, flung his head
13:08:37 3 back, turned, fell --

13:08:38 4 **A.** Right.

13:08:39 5 **Q.** -- did all that on purpose, right?

13:08:41 6 **A.** Right.

13:08:41 7 **Q.** And in the course of doing that, you've
13:08:43 8 told us that he damaged the mirror on the vehicle,
13:08:45 9 left it, you know, detached from the car, vibrating
13:08:48 10 when you drove it, and he's also broken the
13:08:50 11 passenger -- the driver's side window to the point
13:08:52 12 where it won't track up and down properly, right?

13:08:54 13 **A.** Yes.

13:08:55 14 **Q.** So you know at this point that he has
13:08:58 15 done all that deliberately, so why wouldn't he be
13:09:01 16 under arrest at this point?

13:09:02 17 **MS. HUGGINS:** Form.

13:09:03 18 **THE WITNESS:** I just don't --

13:09:04 19 **MR. RUPP:** Why -- strike it.

13:09:04 20 Why didn't you arrest him right away?

13:09:06 21 **THE WITNESS:** I -- he -- I don't remember
13:09:08 22 exactly when it was determined that he was placed
13:09:09 23 under arrest.

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13:09:10 1 BY MR. RUPP:

13:09:10 2 Q. Okay. Well, who made that determination
13:09:12 3 when it was determined to place him under arrest?

13:09:14 4 A. I believe that was part of the
13:09:16 5 conversation when I spoke with Lieutenant McHugh,
13:09:18 6 because initially we didn't know if it was more of
13:09:23 7 a fraud -- fraudulent-type situation.

13:09:26 8 Q. Well, fraud's a crime too, right?

13:09:27 9 A. Yes.

13:09:28 10 Q. Well, why wouldn't he be arrested for
13:09:31 11 that?

13:09:31 12 A. I just don't remember the exact
13:09:33 13 time frame of when it was determined that that --
13:09:34 14 that he was going to jail for that.

13:09:35 15 Q. Well, are you telling me that
13:09:37 16 Lieutenant McHugh made the call whether to arrest
13:09:39 17 Mr. Kistner or not, not the officers on the scene?

13:09:42 18 A. No.

13:09:42 19 Q. Okay. So who made the decision to
13:09:44 20 arrest Mr. Kistner?

13:09:44 21 A. The officers on scene.

13:09:45 22 Q. Okay. Not Lieutenant McHugh?

13:09:47 23 A. No. It was -- I was -- maybe I'm

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13:09:50 1 misexplaining.

13:09:50 2 **Q.** Maybe I misunderstood. I thought you
13:09:53 3 told me that that was the time McHugh was called
13:09:55 4 because you weren't sure because maybe it was just
13:09:58 5 a fraud case.

13:09:58 6 **A.** No. No. As far as charges.

13:10:00 7 **Q.** Okay.

13:10:01 8 **A.** So at -- at that time, it was -- and
13:10:04 9 I think Karl Schultz put it over the air about
13:10:07 10 fraud. It was on the air.

13:10:09 11 **Q.** Okay.

13:10:09 12 **A.** I just -- and I guess I misunderstood.
13:10:12 13 I don't know at what point it was determined that
13:10:16 14 he was being placed under arrest versus being
13:10:18 15 detained.

13:10:19 16 **Q.** Okay. And so a person -- I thought
13:10:23 17 a person in handcuffs typically was being arrested,
13:10:26 18 but they can be in handcuffs and just be detained
13:10:29 19 and then let go, right?

13:10:30 20 **A.** Correct.

13:10:30 21 **Q.** Okay. So that keeps them under
13:10:32 22 control, makes sure they're not a threat, but they
13:10:34 23 may not necessarily be taken to central booking.

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13:10:36 1 **A.** Correct.

13:10:36 2 **Q.** Okay. And we don't -- we can't tell
13:10:38 3 and you don't remember, from this video that I've
13:10:41 4 frozen at the 1:17 mark, whether at this point or
13:10:45 5 not a decision had been made merely to detain
13:10:48 6 Mr. Kistner or to arrest him?

13:10:50 7 **A.** Right. I don't remember exactly.

13:10:51 8 **Q.** Fair enough. Okay. So let's continue.
13:10:52 9 He's -- he kind of walks eventually kind of
13:10:55 10 out of the frame. Do you know where he's being
13:10:57 11 taken?

13:10:57 12 **A.** To Officer Schultz' and Moriarity's
13:10:59 13 patrol vehicle.

13:11:00 14 **Q.** Why is that?

13:11:01 15 **A.** I -- I don't remember why we walked him
13:11:03 16 to that vehicle instead -- instead of our vehicle.
13:11:07 17 I -- I don't remember.

13:11:10 18 **Q.** Okay. Well, was there -- even if you
13:11:13 19 don't remember why, was there any purpose in going
13:11:15 20 to the other vehicle?

13:11:18 21 **A.** I -- I don't remember.

13:11:20 22 **Q.** Well, did that vehicle have more
13:11:22 23 equipment or somehow have a better ability to -- to

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13:11:25 1 handle Mr. Kistner or process him while a decision
13:11:28 2 was being made?

13:11:30 3 **A.** No. I think the vehicles are equipped
13:11:33 4 with pretty much the same equipment.

13:11:35 5 **Q.** Okay. So as you sit here, you have no
13:11:38 6 recollection or idea why he was removed from the --
13:11:42 7 the proximity of your SUV, 473, down to the 532
13:11:46 8 vehicle?

13:11:47 9 **A.** Right. I don't remember.

13:11:47 10 **Q.** Okay. Fair.

13:11:49 11 Now, I want to stop the frame right here.
13:11:55 12 Who is the officer in the bottom right-hand corner,
13:11:57 13 at the 1:30 mark?

13:11:58 14 **A.** Officer Schultz.

13:11:59 15 **Q.** And who is the officer who's still
13:12:03 16 south on Schmarbeck from Officer Schultz?

13:12:06 17 **A.** Officer Velez.

13:12:07 18 **Q.** Okay. And then do you see Earl there?

13:12:10 19 **A.** Yes.

13:12:10 20 **Q.** And was it at some point were you aware
13:12:13 21 that Earl was on the phone?

13:12:14 22 **A.** Watching the video, that's what it
13:12:17 23 appears to be, but I don't remember.

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13:59:35 1 **Q.** Okay. Do you know who that person was?

13:59:37 2 **A.** I don't.

13:59:37 3 **Q.** All right. And I think you told me you
13:59:40 4 had told them that -- that he had deliberately hit
13:59:42 5 the SUV.

13:59:43 6 **A.** Yes.

13:59:43 7 **Q.** Okay. At any time in that four hours
13:59:46 8 and seven minutes that you were at ECMC with
13:59:49 9 Mr. Kistner -- and I know you've told me you
13:59:51 10 weren't with him every second -- did you ever hear
13:59:54 11 him say that you had hit him with the SUV?

13:59:57 12 **A.** Not that I recall. And can I --

14:00:00 13 **Q.** At any time from the time of the
14:00:02 14 impact, to the location change to central booking
14:00:05 15 at 3:37 that afternoon, did you ever hear
14:00:09 16 Mr. Kistner tell anyone that you had hit him
14:00:13 17 with your SUV?

14:00:15 18 **A.** I don't remember.

14:00:15 19 **Q.** Do you recall whether any lawyers came
14:00:18 20 to ECMC?

14:00:19 21 **A.** Yes.

14:00:19 22 **Q.** Tried to meet with Mr. Kistner?

14:00:20 23 **A.** Yes.

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14:00:20 1 **Q.** Okay. Do you know how they got there
14:00:22 2 or why they came?

14:00:23 3 **MS. HUGGINS:** Form.

14:00:26 4 **THE WITNESS:** I don't know why -- how they
14:00:28 5 got there.

14:00:29 6 **BY MR. RUPP:**

14:00:29 7 **Q.** Did Mr. Kistner have a cell phone?

14:00:33 8 **A.** I don't believe so.

14:00:35 9 **Q.** Okay. Do you know how he got word out
14:00:37 10 to his lawyers that he needed their help?

14:00:39 11 **A.** I don't.

14:00:40 12 **Q.** Okay. Did you talk to the lawyers?

14:00:41 13 **A.** I did talk to one lawyer.

14:00:43 14 **Q.** All right. Did the lawyers try to go
14:00:45 15 back to talk to Mr. Kistner?

14:00:47 16 **A.** He asked to.

14:00:49 17 **Q.** And did you allow it?

14:00:50 18 **A.** No.

14:00:50 19 **Q.** Why not?

14:00:52 20 **A.** Because he was in custody, and it was
14:00:56 21 not something that we would normally do.

14:00:59 22 **Q.** Okay. Did the lawyer tell you what --
14:01:00 23 what he had heard or thought happened in the

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14:01:02 1 incident on Schmarbeck?

14:01:04 2 **A.** The lawyer told me something about
14:01:06 3 there being video, which I had already known that
14:01:09 4 there was video. I just never saw it.

14:01:11 5 **Q.** How did you know there was video?

14:01:13 6 **A.** I believe Mr. Kistner or someone
14:01:16 7 on scene -- I don't know if it was Mr. Kistner or
14:01:19 8 Earl -- said, we have cameras.

14:01:21 9 **Q.** Okay. And you didn't ask to retrieve
14:01:24 10 that video footage?

14:01:26 11 **A.** Not at that time, no.

14:01:28 12 **Q.** Okay. All right. So I think you've
14:01:30 13 already -- maybe already answered this, but at no
14:01:34 14 time between 11:30 a.m. and -- and 3:37 p.m. did
14:01:37 15 you ever hear Mr. Kistner say to you or anyone else
14:01:41 16 that you had hit him with the SUV?

14:01:44 17 **A.** He may have, but I don't remember.

14:01:46 18 **Q.** Fair enough. And -- and -- and just to
14:01:47 19 be clear, prior -- from the time that the impact
14:01:49 20 happened, up to 3:37 p.m., you hadn't heard him say
14:01:56 21 that either.

14:01:57 22 **A.** He may have. I don't remember.

14:01:59 23 **Q.** Okay. Well, let me ask it this way:

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14:02:01 1 Did you ever become aware, prior to being served
14:02:04 2 with the lawsuit in this case, that Mr. Kistner
14:02:07 3 blamed you for hitting him with the SUV as you
14:02:11 4 tried to pull away on Schmarbeck that day?

14:02:14 5 **A.** I don't remember exactly.

14:02:15 6 **Q.** Well, okay, but my question is: Prior
14:02:16 7 to receiving the summons and complaint, were you
14:02:18 8 aware that this man was contending that you had hit
14:02:21 9 him, as opposed to he attacked your police vehicle
14:02:24 10 at any time?

14:02:24 11 **MS. HUGGINS:** Form.

14:02:24 12 **THE WITNESS:** Yes.

14:02:25 13 **BY MR. RUPP:**

14:02:26 14 **Q.** Okay. Well, and my question now is:
14:02:27 15 When was the first time you were aware that
14:02:30 16 Mr. Kistner said you hit him?

14:02:31 17 **A.** That's -- I don't remember.

14:02:32 18 **Q.** Okay. Well, was it -- okay, but let me
14:02:34 19 try to narrow it down.

14:02:36 20 Was it -- was it any time on January 1 of
14:02:39 21 2017 that you came to learn --

14:02:39 22 **A.** Yeah.

14:02:41 23 **Q.** -- that he thought you had hit him?

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14:02:43 1 **A.** Yes.

14:02:43 2 **Q.** Okay. So -- so since we know it was
14:02:46 3 that day, do you know whether it was when you were
14:02:49 4 at ECMC, central booking, or back at ECMC? Do you
14:02:52 5 know?

14:02:52 6 **A.** I don't remember.

14:02:52 7 **Q.** Okay. But at some point you did learn
14:02:54 8 that, right?

14:02:54 9 **A.** Yes.

14:02:54 10 **Q.** Okay. Did that come as a surprise to
14:03:00 11 you?

14:03:00 12 **A.** I -- I don't remember how -- what
14:03:02 13 I thought that day of it.

14:03:03 14 **Q.** Okay. Did you talk it over with
14:03:05 15 anyone?

14:03:07 16 **A.** Talk over --

14:03:08 17 **Q.** Well, like with Officer Velez, did you
14:03:10 18 say, are you kidding me? That guy's saying that
14:03:12 19 I hit him?

14:03:15 20 **A.** I -- that -- I don't -- I'm sure we
14:03:17 21 talked about it, but I don't remember the exact
14:03:20 22 conversation.

14:03:20 23 **Q.** Okay. Did you talk to anybody else

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14:03:21 1 about it?

14:03:24 2 **A.** Well, I had spoken with Lieutenant
14:03:26 3 McHugh.

14:03:26 4 **Q.** Well, that was while you were still on
14:03:28 5 Schmarbeck, right?

14:03:29 6 **A.** Right.

14:03:29 7 **Q.** Well, you didn't know at that point
14:03:31 8 that Mr. Kistner was taking the position you had
14:03:33 9 hit him, or did you?

14:03:35 10 **A.** I may have. I don't remember. I --

14:03:36 11 **Q.** Oh, so it might have been back at the
14:03:38 12 scene that you knew Mr. Kistner might have said
14:03:40 13 something. Because I've asked you already, I
14:03:43 14 assume you have told me everything that you
14:03:45 15 remember that he said. Okay.

14:03:47 16 So if you talked to McHugh at Schmarbeck,
14:03:50 17 and you knew then that Kistner claimed you hit him
14:03:53 18 with the SUV, he must have said that to you, right?

14:03:56 19 **A.** He -- he may have.

14:03:57 20 **Q.** Okay. So you may have heard that at --
14:04:00 21 still on Schmarbeck, before he was transported?

14:04:02 22 **A.** Right. I don't remember --

14:04:03 23 **Q.** Okay.

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14:04:03 1 **A.** -- exactly.

14:04:04 2 **Q.** Okay. Well, did you know it --

14:04:06 3 certainly by the time you got to ECMC and you were

14:04:07 4 talking to the doctors, were you aware that he was

14:04:10 5 saying you hit him when you were telling them that

14:04:13 6 no, no, no, he hit me?

14:04:14 7 **A.** I may have. I don't remember.

14:04:17 8 **Q.** You don't remember. Okay.

14:04:18 9 So it was sometime on -- on the -- on the

14:04:21 10 first day of January 2017, but you just -- you have

14:04:23 11 no recollection of when was the first time you were

14:04:25 12 aware he was taking the position you had hit him.

14:04:28 13 **A.** Right.

14:04:29 14 **Q.** Okay. All right. Now, did Mr. Kistner

14:04:34 15 get a clean bill of health at ECMC when you were

14:04:37 16 there until 5:37 on the day of the incident, or do

14:04:42 17 you recall there being something other -- some

14:04:45 18 other determination?

14:04:45 19 **MS. HUGGINS:** Form.

14:04:46 20 **MR. RUPP:** What was -- strike it.

14:04:47 21 What was the outcome of the first visit to

14:04:50 22 ECMC?

14:04:50 23 **THE WITNESS:** I believe he was medically

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14:04:51 1 cleared from an injury.

14:04:52 2 **BY MR. RUPP:**

14:04:52 3 Q. Okay. And he was not admitted.

14:04:54 4 A. No.

14:04:54 5 Q. Okay. And he never went to CPEP.

14:04:57 6 A. On that first visit?

14:04:59 7 Q. That first visit.

14:05:01 8 A. No, he did not.

14:05:04 9 Q. Okay. So you took him to central
14:05:06 10 booking, right?

14:05:06 11 A. Myself and Officer Velez.

14:05:07 12 Q. And where is central -- who drove?

14:05:07 13 A. I did.

14:05:07 14 Q. And he was in the back?

14:05:07 15 A. Yes.

14:05:07 16 Q. Handcuffed?

14:05:08 17 A. Yes.

14:05:09 18 Q. Behind a cage?

14:05:09 19 A. Yes.

14:05:13 20 Q. All right. And at that point, had he
14:05:15 21 been placed under arrest?

14:05:16 22 A. Yes.

14:05:16 23 Q. Okay. Do you remember when?

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14:05:19 1 **MS. HUGGINS:** Form.

14:05:19 2 **THE WITNESS:** When it was determined that he
14:05:20 3 was placed under arrest?

14:05:21 4 **BY MR. RUPP:**

14:05:22 5 **Q.** When -- when he was arrested, and
14:05:22 6 I assume -- I've watched enough police shows --
14:05:25 7 that you have to read him his rights, right?

14:05:27 8 **MS. HUGGINS:** Form.

14:05:28 9 **THE WITNESS:** Yes.

14:05:28 10 **BY MR. RUPP:**

14:05:28 11 **Q.** Okay. Did you read him his rights?

14:05:30 12 **A.** I don't remember -- I would have, but
14:05:33 13 I don't remember when.

14:05:33 14 **Q.** Okay. Well, do you remember who
14:05:35 15 arrested him?

14:05:36 16 There was four officers there. Which one of
14:05:38 17 you placed him under arrest and read his rights to
14:05:41 18 him?

14:05:41 19 **A.** It would have been me. I was the --
14:05:43 20 I was the arresting officer.

14:05:44 21 **Q.** Okay. So you hadn't done that, based
14:05:48 22 on all of the questions I asked you before, before
14:05:50 23 you left Schmarbeck, right?

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14:05:52 1 **A.** I don't remember at what time his
14:05:55 2 rights were read. I don't remember.

14:05:57 3 **Q.** Well, rights were read and placed under
14:05:59 4 arrest, right?

14:06:00 5 Because when we went through all the videos,
14:06:02 6 I have him sitting in patrol vehicle 532, Schultz's
14:06:05 7 vehicle, and you tell me -- you told me several
14:06:08 8 times he had only been detained at that point and
14:06:11 9 not placed under arrest, right?

14:06:12 10 **A.** Because I don't remember at the exact
14:06:14 11 moment that it was determined he was placed under
14:06:16 12 arrest versus detained.

14:06:18 13 **Q.** Okay. But was he placed under arrest
14:06:20 14 still at Schmarbeck, or was he placed under arrest
14:06:22 15 at ECMC?

14:06:23 16 **A.** At Schmarbeck, I believe.

14:06:24 17 **Q.** Okay. So he was arrested before
14:06:26 18 anybody drove off to ECMC with him.

14:06:28 19 **A.** I believe. I --

14:06:29 20 **Q.** Okay.

14:06:30 21 **A.** I don't -- I don't remember exactly.

14:06:31 22 **Q.** All right. And you would have arrested
14:06:32 23 him and you would have read him his rights.

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14:06:34 1 **MS. HUGGINS:** Form.

14:06:34 2 **THE WITNESS:** Yeah.

14:06:34 3 **BY MR. RUPP:**

14:06:35 4 **Q.** Okay.

14:06:35 5 **A.** I believe so.

14:06:38 6 **Q.** But you don't remember doing that.

14:06:39 7 **A.** I don't remember exactly when it was

14:06:40 8 done.

14:06:40 9 **Q.** So are you sure you read him his

14:06:43 10 rights?

14:06:43 11 **A.** I always read rights.

14:06:43 12 **Q.** Okay. All right.

14:06:50 13 **A.** Can we take a break?

14:06:51 14 **MR. RUPP:** Sure.

14:06:51 15 (A recess was then taken at 2:06 p.m.)

14:29:50 16 (On the record at 2:29 p.m.)

14:29:50 17 **BY MR. RUPP:**

14:29:50 18 **Q.** Okay. We've just had a brief break.

14:29:53 19 I'm going to ask you some questions now about

14:29:56 20 taking Mr. Kistner to central booking. And that

14:30:02 21 was you and Officer Velez, right?

14:30:05 22 **A.** Yes.

14:30:05 23 **Q.** And you both went and stayed with each

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14:30:07 1 other for the -- for the whole day, I take it.

14:30:10 2 **A.** Yes.

14:30:10 3 **Q.** Including the overtime.

14:30:11 4 **A.** Yes.

14:30:11 5 **Q.** All right. So what's the procedure at
14:30:13 6 central booking?

14:30:17 7 At -- at this point and when you arrive at
14:30:18 8 central booking, do -- Mr. Kistner's been arrested,
14:30:20 9 charged. Do we know what the charges are against
14:30:22 10 him?

14:30:22 11 **A.** Yes.

14:30:22 12 **MS. HUGGINS:** Form.

14:30:23 13 **THE WITNESS:** Yes.

14:30:24 14 **BY MR. RUPP:**

14:30:25 15 **Q.** Okay. He's been arrested.

14:30:26 16 **A.** He's been placed under arrest.

14:30:27 17 **Q.** Okay. All right. And when you arrive
14:30:29 18 at central booking, what is he being charged with?

14:30:33 19 **A.** Criminal mischief and disorderly
14:30:35 20 conduct, if I'm remembering correctly.

14:30:38 21 **Q.** All right. And as I understand it from
14:30:39 22 looking at the statutes and some of the disclosures
14:30:42 23 from the City, criminal mischief is with respect to

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14:30:45 1 your view that he attacked your SUV.

14:30:48 2 **MS. HUGGINS:** Form.

14:30:49 3 **BY MR. RUPP:**

14:30:49 4 **Q.** Right?

14:30:49 5 **A.** Intentionally caused damage.

14:30:51 6 **Q.** Intentionally caused damage by flinging
14:30:53 7 himself at the SUV, right?

14:30:55 8 **A.** Yeah. Flinging or whatever word you
14:30:58 9 choose to use.

14:30:58 10 **Q.** Okay.

14:30:59 11 **MS. HUGGINS:** Form.

14:30:59 12 **BY MR. RUPP:**

14:31:00 13 **Q.** And the -- the -- what was the second
14:31:04 14 one?

14:31:04 15 **A.** Disorderly conduct.

14:31:05 16 **Q.** And that was relative to what?

14:31:07 17 **A.** His behavior at the hospital.

14:31:08 18 **Q.** Okay. All right. What is the
14:31:12 19 procedure at central booking when you first arrive
14:31:14 20 with somebody who's going to be charged with crimes
14:31:16 21 or has been charged?

14:31:17 22 **A.** Before we enter the building, we have
14:31:21 23 to lock up our firearms, and we enter the building,

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14:31:27 1 and then there's a window where we place our
14:31:31 2 paperwork for a report technician to begin the
14:31:38 3 arrest process, I guess.

14:31:40 4 Q. And what paperwork did you have to give
14:31:43 5 to the central booking people at that time?

14:31:45 6 A. It would have been our arrest -- we
14:31:48 7 refer to it as an arrest card. It's a normal piece
14:31:52 8 of paper. It's the arrest form.

14:31:53 9 Q. Okay. Is that handwritten, or what --
14:31:57 10 what kind of -- what form does that take?

14:31:59 11 A. Are -- I didn't -- I don't write it.
14:32:02 12 Are you asking --

14:32:02 13 Q. Okay.

14:32:03 14 A. I fill it in.

14:32:04 15 Q. Okay. So is it you fill it in in
14:32:05 16 handwriting?

14:32:05 17 A. Yes.

14:32:06 18 Q. Okay. And because you haven't really
14:32:08 19 had access to a computer other than the one that's
14:32:11 20 the monitor in your car, right?

14:32:12 21 A. That form's always handwritten.

14:32:14 22 Q. Okay. Because you're in the field when
14:32:16 23 you do it, right?

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14:32:17 1 **A.** Correct.

14:32:17 2 **Q.** Okay. And so did you give central
14:32:28 3 booking anything else at that time?

14:32:34 4 **A.** I believe we would have given his
14:32:38 5 medical release paperwork.

14:32:41 6 **Q.** Okay. And what -- so you had some
14:32:44 7 paperwork you were given at ECMC when you -- when
14:32:47 8 you departed?

14:32:48 9 **A.** Yes. That he was medically cleared.

14:32:50 10 **Q.** Okay. Did that assess him at all or
14:32:53 11 just -- just a -- a statement from the hospital
14:32:55 12 that he was medically cleared?

14:32:56 13 **A.** I don't know what the actual paperwork
14:32:59 14 is called, but his -- we refer to it as medical
14:33:03 15 release paperwork.

14:33:07 16 **Q.** All right. And so after you pass that
14:33:10 17 paperwork -- all right.

14:33:30 18 What else, if anything, do you give to
14:33:33 19 central booking? Documentation from ECMC and the
14:33:36 20 arrest -- is it called an arrest data form?

14:33:39 21 **A.** Yes.

14:33:39 22 **MR. RUPP:** All right. Let's do this. I'll
14:33:41 23 ask Anne to mark this as -- what are we up to? 15?

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13:41:14 1 **Q.** All right. Did you take any
13:41:17 2 photographs that day?

13:41:17 3 **A.** I don't remember taking any.

13:41:19 4 **Q.** All right. Do you remember if you're
13:41:20 5 depicted on video taking a photograph?

13:41:22 6 **A.** It appears that that is what was
13:41:24 7 happening, but I don't remember doing so.

13:41:25 8 **Q.** Do you still have that photograph?

13:41:27 9 **A.** No.

13:41:28 10 **Q.** Do you still have that phone?

13:41:29 11 **A.** I have that phone, yes.

13:41:31 12 **Q.** Okay. What did you do with the
13:41:33 13 photograph you took?

13:41:34 14 **MS. HUGGINS:** Form.

13:41:36 15 **THE WITNESS:** So at some point I upgraded to
13:41:40 16 a new phone, and I lost about four years of
13:41:44 17 pictures, videos, music.

13:41:46 18 **BY MR. RUPP:**

13:41:46 19 **Q.** You didn't have any of that uploaded to
13:41:48 20 the cloud or anything?

13:41:49 21 **A.** I did not.

13:41:50 22 **Q.** Okay.

13:41:50 23 **A.** I didn't start using the cloud until

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13:41:52 1 I think the current phone that I have.

13:41:53 2 Q. Why did you take a photograph?

13:41:55 3 A. I don't --

13:41:55 4 MS. HUGGINS: Form.

13:41:55 5 THE WITNESS: I don't remember.

13:41:57 6 BY MR. RUPP:

13:41:57 7 Q. Why did you appear to be taking
13:41:58 8 a photograph on the video?

13:42:00 9 A. I honestly don't remember.

13:42:01 10 Q. Okay. Well, would it be to document
13:42:03 11 the alleged damage to the police SUV?

13:42:06 12 A. It could have been.

13:42:09 13 Q. I mean, you knew, and eventually you
13:42:10 14 learned, that Mr. Kistner had been charged with
13:42:12 15 a felony, right?

13:42:13 16 A. Yes.

13:42:14 17 Q. Okay. And you knew that that felony
13:42:16 18 had a threshold for the amount of damage that had
13:42:19 19 to be suffered by the vehicle, correct?

13:42:20 20 A. Yes.

13:42:20 21 Q. And you knew that if you charged
13:42:22 22 somebody with a felony, there's a chance that you
13:42:25 23 might be called upon to testify in court, right?

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13:42:27 1 **A.** Yes.

13:42:27 2 **Q.** And you knew that as the driver of the
13:42:29 3 SUV, that might be you, right?

13:42:30 4 **A.** Yes.

13:42:31 5 **Q.** And you knew that you might be asked to
13:42:33 6 verify and document how much damage had been caused
13:42:36 7 to patrol vehicle 473, right?

13:42:40 8 **A.** To the extent that it would be over
13:42:42 9 a dollar amount. It wouldn't be my determination
13:42:45 10 to determine the exact dollar amount it would cost
13:42:48 11 to repair it.

13:42:48 12 **Q.** Well, sure, but it might help your
13:42:51 13 testimony to be able to show a photograph saying,
13:42:52 14 see, the mirror is not attached to the car anymore,
13:42:55 15 right?

13:42:55 16 **A.** That could help in a -- in a case, yes.

13:42:58 17 **Q.** Right. So that might have been the
13:43:00 18 reason why you took that photograph, right?

13:43:01 19 **MS. HUGGINS:** Form.

13:43:01 20 **THE WITNESS:** I don't remember the reason.

13:43:02 21 **BY MR. RUPP:**

13:43:03 22 **Q.** That might have been the reason why you
13:43:05 23 were depicted in the video surveillance as having

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13:43:07 1 taken a photograph, right?

13:43:08 2 A. I don't remember why.

13:43:08 3 Q. Okay. Well, would there be any other
13:43:11 4 reason why you would want to take a photograph of
13:43:13 5 your SUV that day, Ms. McDermott?

13:43:15 6 A. I don't remember.

13:43:16 7 Q. Okay. I'm not asking if you remember.
13:43:18 8 I'm asking if there's any other reason why you
13:43:20 9 would just want to pull out your phone and take
13:43:23 10 a picture of the side of your SUV.

13:43:24 11 MS. HUGGINS: Form.

13:43:25 12 THE WITNESS: I don't know.

13:43:25 13 BY MR. RUPP:

13:43:26 14 Q. Okay. Can you think of one, as you sit
13:43:29 15 here, why you might want to have a picture of your
13:43:32 16 SUV from January 1st, 2017, if it's not to document
13:43:35 17 damage?

13:43:35 18 A. I wouldn't know.

13:43:36 19 Q. Okay. And you don't have that
13:43:38 20 photograph.

13:43:38 21 A. No.

13:43:38 22 MS. HUGGINS: Form.

13:43:38 23 BY MR. RUPP:

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13:43:39 1 Q. Did you give it to anyone?

13:43:40 2 MS. HUGGINS: Form.

13:43:40 3 THE WITNESS: No.

13:43:41 4 BY MR. RUPP:

13:43:42 5 Q. Okay. Did anybody ever ask you for
13:43:43 6 a photograph?

13:43:45 7 A. Anybody meaning?

13:43:47 8 Q. Anybody at all ever, meaning including
13:43:49 9 Ms. Huggins, as discovery in this case, were you
13:43:52 10 asked about the photograph that you had in your
13:43:53 11 phone?

13:43:54 12 MS. HUGGINS: Form. Well --

13:43:54 13 BY MR. RUPP:

13:43:55 14 Q. Or if you had one.

13:43:56 15 MS. HUGGINS: -- to the extent that you're
13:43:57 16 asking about conversations I've had with my
13:43:59 17 client --

13:43:59 18 MR. RUPP: I can -- I can explore compliance
13:44:00 19 with discovery requests.

13:44:01 20 MS. HUGGINS: In -- in terms of not
13:44:02 21 substance of our conversations, but if -- if --
13:44:04 22 if -- if she provided --

13:44:05 23 MR. RUPP: Only if she asked.

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13:44:06 1 I'm not asking how you asked --

13:44:08 2 **MS. HUGGINS:** Correct.

13:44:09 3 **MR. RUPP:** -- or whether you were polite
13:44:10 4 about it.

13:44:11 5 **MS. HUGGINS:** I'm okay with that.

13:44:12 6 **MR. RUPP:** Okay. That's all I'm asking.

13:44:12 7 **THE WITNESS:** Yes.

13:44:12 8 **BY MR. RUPP:**

13:44:14 9 **Q.** Were you ever asked for photographs?

13:44:15 10 **A.** Yes.

13:44:15 11 **Q.** Did you search for them?

13:44:17 12 **A.** I did search for them.

13:44:18 13 **Q.** And you didn't find any.

13:44:19 14 **A.** Because I didn't have that phone.

13:44:20 15 **Q.** Okay. Well, you --

13:44:20 16 **A.** I'm sorry.

13:44:21 17 **Q.** You had the phone.

13:44:21 18 **A.** I didn't -- I didn't have the four
13:44:24 19 years of --

13:44:24 20 **Q.** Okay.

13:44:25 21 **A.** -- anything that was on that phone.

13:44:27 22 **Q.** All right. Did you ever -- do you ever
13:44:27 23 remember printing out a photograph taken of your

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13:44:30 1 SUV that day, if you took one?

13:44:31 2 **A.** I don't remember ever printing one.

13:44:33 3 **Q.** Okay. Do you know if anyone else took
13:44:35 4 a photograph of the SUV?

13:44:36 5 **A.** I don't remember.

13:44:37 6 **Q.** Do you know if the damage that was
13:44:39 7 needed to sustain the felony charge against
13:44:41 8 Mr. Kistner was ever documented by anyone ever in
13:44:46 9 photographic form?

13:44:47 10 **A.** In photographic form?

13:44:49 11 **Q.** Yeah.

13:44:50 12 **A.** I don't know.

13:44:51 13 **Q.** Was the damage that was needed to
13:44:52 14 sustain the felony charge against Mr. Kistner ever
13:44:55 15 documented in any other form of any kind?

13:44:57 16 Written down. Estimate prepared. Repair
13:45:01 17 logs or records.

13:45:02 18 **A.** In the arrest paperwork, there would
13:45:05 19 have -- there's -- in the arrest paperwork --

13:45:08 20 **Q.** We'll get to that.

13:45:10 21 **A.** Okay.

13:45:10 22 **Q.** But that was just an allegation of
13:45:12 23 damage and an allegation that it exceeded \$250.

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13:45:18 1 I'm asking if there was any documentation of the
13:45:19 2 actual damage and the actual cost ever.

13:45:22 3 **MS. HUGGINS:** Form. You can answer.

13:45:23 4 **BY MR. RUPP:**

13:45:24 5 **Q.** Other than a description.

13:45:24 6 **A.** I don't know.

13:45:25 7 **Q.** Okay. You were designated, by that
13:45:28 8 point, as the primary person in charge of that
13:45:31 9 particular incident, right?

13:45:33 10 **A.** At what time?

13:45:34 11 **Q.** Well, I mean, at the time as of
13:45:37 12 1:14 p.m., you knew that you were primary on this
13:45:40 13 particular incident, 17-0010506.

13:45:46 14 **A.** That's when it was changed with
13:45:48 15 dispatch.

13:45:48 16 **Q.** Sure. But, I mean, it was your
13:45:49 17 vehicle, you were driving it, and you were primary,
13:45:52 18 right?

13:45:52 19 **A.** I was made primary, yes.

13:45:53 20 **Q.** So fair to say that you knew that you
13:45:55 21 would likely be the officer who would testify
13:45:57 22 against Mr. Kistner in a felony trial, if it went
13:46:00 23 that far?

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13:46:02 1 **A.** I mean, we all could be.

13:46:04 2 **Q.** Well, you would have been the one who

13:46:07 3 claimed to have seen what Mr. Kistner did, throwing

13:46:10 4 himself at the -- at the vehicle, right?

13:46:11 5 **A.** Right.

13:46:11 6 **MS. HUGGINS:** Form.

13:46:12 7 **BY MR. RUPP:**

13:46:12 8 **Q.** So, I mean, your police experience

13:46:13 9 would tell you that you would be the person who

13:46:15 10 would most likely be called by the district

13:46:18 11 attorney, right?

13:46:18 12 **A.** Yes.

13:46:18 13 **Q.** Okay. And you've testified before in

13:46:20 14 criminal trials, right?

13:46:21 15 **A.** Yes.

13:46:21 16 **Q.** And people that you've been involved in

13:46:23 17 arresting.

13:46:23 18 **A.** Yes.

13:46:23 19 **Q.** And you've given eyewitness testimony

13:46:26 20 of what you saw, right?

13:46:26 21 **A.** Yes.

13:46:27 22 **Q.** And you knew that was a possibility

13:46:29 23 here.

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13:46:30 1 **A.** Yes.

13:46:30 2 **Q.** Okay. So what, if anything, did you do
13:46:32 3 to verify the extent of the damage to the vehicle
13:46:34 4 that would sustain the felony charge against
13:46:36 5 Mr. Kistner?

13:46:41 6 **A.** It would -- that would have been
13:46:43 7 determined by the garage.

13:46:45 8 **Q.** Okay. So what, if anything, did you do
13:46:49 9 to make sure that the garage knew to make that
13:46:51 10 assessment and provide you with that information?

13:46:54 11 **MS. HUGGINS:** Form. You can answer.

13:46:58 12 **THE WITNESS:** I -- I don't believe I did
13:46:59 13 anything in regards to that.

13:47:00 14 **BY MR. RUPP:**

13:47:01 15 **Q.** Okay. So your testimony is that you
13:47:02 16 didn't take any steps to make sure that you could
13:47:04 17 actually prove that the damage sustained to the SUV
13:47:06 18 exceeded \$250.

13:47:09 19 **A.** That would have had to -- yeah, that
13:47:11 20 would be determined by the -- the garage and what
13:47:13 21 their labor and all that costs.

13:47:14 22 **MR. RUPP:** I understand that, but listen to
13:47:16 23 my question.

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13:47:16 1 Can you read it back, please, Anne?

13:47:23 2 **MS. HUGGINS:** And if you could read the
13:47:24 3 answer.

13:47:24 4 (The above-requested portion was then read
13:47:51 5 by the reporter.)

13:47:51 6 **BY MR. RUPP:**

13:47:52 7 **Q.** My question is about what you did, not
13:47:55 8 what the garage would do or should do.

13:47:58 9 **A.** Then no, I didn't.

13:47:59 10 **MR. RUPP:** Thank you.

13:48:00 11 All right. Let's keep watching.

13:48:00 12 (Video clip played.)

13:48:00 13 **BY MR. RUPP:**

13:48:02 14 **Q.** You and Officer Velez get back in your
13:48:05 15 SUV at roughly the same time. Santana goes to his.
13:48:08 16 Is that right?

13:48:08 17 **A.** Yes.

13:48:08 18 **Q.** We can't see Moriarity and Schultz, but
13:48:10 19 presumably they're departing the scene as well,
13:48:14 20 with Mr. Kistner in the back, correct?

13:48:16 21 **A.** Correct.

13:48:16 22 **Q.** All right. We're just going to watch
13:48:18 23 this to the end. It's another two minutes and five

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13:48:21 1 seconds.

13:48:21 2 That's you pulling away, right?

13:48:23 3 **A.** Yes.

13:48:23 4 **Q.** Okay. And that's Santana following in
13:48:24 5 the Charger.

13:48:25 6 **A.** Yes.

13:48:25 7 **Q.** All right. And this may be all she
13:48:26 8 wrote on this video, but I'll fast-forward it.

13:48:36 9 And does that -- regardless of the time stamp
13:48:40 10 on the video itself, does that, you know, accurately
13:48:43 11 reflect the last time you were on Schmarbeck that
13:48:45 12 day, as you're pulling away?

13:48:47 13 **A.** Yes.

13:48:47 14 **Q.** You didn't go back?

13:48:48 15 **A.** I don't believe so.

13:48:49 16 **Q.** No further visits?

13:48:50 17 **A.** No.

13:48:50 18 **Q.** Your actual involvement in this case
13:48:55 19 continued through the entire rest of your shift and
13:48:57 20 beyond; is that right?

13:48:59 21 **A.** Yes.

13:48:59 22 **Q.** Okay. In fact, you were on overtime
13:49:01 23 for some of the time that you -- you would have

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13:49:07 1 been off at 4 o'clock, right?

13:49:09 2 **A.** Yes.

13:49:09 3 **Q.** Okay. And so when this -- this was
13:49:13 4 finally archived, it was 6:16 p.m.; is that right?

13:49:18 5 **A.** Yes.

13:49:18 6 **Q.** And as of -- do you know, at 4:16:08,
13:49:28 7 it says disposition added P1375 crime report.

13:49:32 8 Do you know whether that was added because
13:49:34 9 you or -- or Officer Velez radioed it in, or was
13:49:38 10 that just added when the dispatcher got around to
13:49:41 11 it?

13:49:41 12 **A.** I -- I don't know. There -- there are
13:49:45 13 times when the dispatcher will just put their own
13:49:47 14 disposition in to close it out.

13:49:48 15 **Q.** And so how long -- how late did you
13:49:50 16 work that day?

13:49:51 17 **A.** I don't know exactly.

13:49:52 18 **Q.** Do you have payroll records that would
13:49:55 19 show how much overtime you earned?

13:49:56 20 **A.** Yes.

13:49:56 21 **Q.** And is that to the minute? To the
13:49:58 22 15 minutes? To the half hour?

13:50:00 23 **A.** It's generally to the -- to the

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14:37:49 1 not yours? "

14:37:50 2 **A.** Yes.

14:37:51 3 **Q.** What else is not yours?

14:37:52 4 **A.** Just below, where it says arrest data

14:37:57 5 form 00023.

14:37:59 6 **Q.** That was added?

14:38:00 7 **A.** Yes. I --

14:38:00 8 **Q.** Okay.

14:38:00 9 **A.** I believe by the report technician.

14:38:02 10 I don't know.

14:38:02 11 **Q.** Fair enough.

14:38:03 12 Anything else?

14:38:04 13 **A.** Yes. The AFN number, 170000998.

14:38:09 14 **Q.** Okay.

14:38:10 15 **A.** That's the --

14:38:12 16 **Q.** That's also added?

14:38:13 17 **A.** Yeah. That's cell block's. That's

14:38:15 18 their number to keep records.

14:38:16 19 **Q.** Okay.

14:38:19 20 **A.** Under where warrants is checked, it

14:38:21 21 says no, it says report tech initials.

14:38:25 22 **Q.** Where is that on the form?

14:38:26 23 I see it.

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14:38:27 1 **A.** Midway -- yep.

14:38:28 2 **Q.** Okay. All right.

14:38:29 3 **A.** And then it says mug ID, yes,

14:38:32 4 satisfactory ID. That's also the report

14:38:35 5 technician.

14:38:35 6 **Q.** Okay.

14:38:41 7 **A.** Are you injured, no. That would be

14:38:43 8 asked by the report technician and checked off.

14:38:46 9 **Q.** Okay.

14:38:50 10 **A.** And I can't tell, but the incident

14:38:52 11 number looks like -- I don't think that's my

14:38:54 12 writing. It's possible that when you go into --

14:38:59 13 the computer would have the incident number.

14:39:00 14 **Q.** Okay.

14:39:01 15 **A.** But I may have just forgotten to write

14:39:03 16 it in.

14:39:03 17 **Q.** Fair enough.

14:39:05 18 How about -- how about on the second page of

14:39:06 19 the form? Is that anything you --

14:39:13 20 **A.** That would all be --

14:39:14 21 **Q.** -- do?

14:39:14 22 That's all --

14:39:15 23 **A.** That would be checked by me.

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14:39:16 1 **Q.** All right. So you said that they --
14:39:18 2 they take the individual back for a search.

14:39:20 3 Does the degree of the search or the type of
14:39:22 4 search depend on where the person's going to end up
14:39:24 5 that day?

14:39:25 6 **A.** That would be determined by cell block
14:39:28 7 attendants.

14:39:29 8 **Q.** All right. Well, how do cell block
14:39:33 9 attendants know?

14:39:34 10 **MS. HUGGINS:** Form.

14:39:34 11 **MR. RUPP:** I mean, if somebody's charged
14:39:36 12 with these crimes, are they going to be released on
14:39:38 13 an appearance ticket or are they going to be
14:39:40 14 jailed?

14:39:40 15 **MS. HUGGINS:** Form. Are we just saying
14:39:42 16 generally or in this instance specifically?

14:39:44 17 **MR. RUPP:** In this instance, I guess.

14:39:45 18 **THE WITNESS:** In this instance, he was going
14:39:46 19 to be receiving an appearance ticket.

14:39:48 20 **BY MR. RUPP:**

14:39:48 21 **Q.** Did you know that ahead of time?

14:39:49 22 **A.** I believe so.

14:39:50 23 **Q.** Okay. Did you tell that to the cell

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14:39:53 1 block technicians?

14:39:54 2 A. I may have.

14:39:56 3 Q. Okay. Did they ask you?

14:39:57 4 A. I don't remember.

14:39:59 5 Q. Okay. Well, did they ask you what you
14:40:00 6 wanted to happen with Mr. Kistner?

14:40:04 7 A. I don't understand what you mean.

14:40:06 8 Q. Well, did they ask you where he was
14:40:07 9 going after booking?

14:40:10 10 A. I don't remember.

14:40:11 11 Q. Okay. What are the choices? He could
14:40:14 12 go -- in this case, he went back to ECMC. We knew
14:40:17 13 that, and we're going to talk about that.

14:40:19 14 Where else could he have gone?

14:40:21 15 A. You would stay at central booking.

14:40:23 16 Q. Okay. And is central book -- booking
14:40:24 17 also a lockup? A jail?

14:40:26 18 A. Yes.

14:40:26 19 Q. Okay. Did you know which -- which was
14:40:28 20 going to happen to him?

14:40:29 21 A. I believe we knew at that point that he
14:40:32 22 was getting an appearance ticket.

14:40:33 23 Q. All right. Did you know at that point,

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14:40:35 1 when you arrived at central booking, that he was
14:40:37 2 also going to go back to ECMC?

14:40:42 3 **A.** I believe so.

14:40:43 4 **Q.** All right. Does the degree of search
14:40:46 5 that an arrested person undergoes depend on whether
14:40:50 6 they're going to be released on their own
14:40:52 7 recognizances or they're going to be placed in
14:40:57 8 lockup?

14:40:58 9 **A.** Are you asking if those searches are
14:40:59 10 different?

14:41:00 11 **Q.** Yes.

14:41:02 12 **A.** That, I don't know.

14:41:05 13 **Q.** Okay.

14:41:05 14 **A.** That's -- that's a cell block -- we
14:41:07 15 don't do the searches in either case.

14:41:10 16 **Q.** I know you don't do the searches, but,
14:41:12 17 I mean, if somebody's going to end up in the
14:41:14 18 custody of the BPD in lockup, it's true that they
14:41:18 19 receive a more thorough search; isn't that right?

14:41:20 20 **MS. HUGGINS:** Form.

14:41:20 21 **THE WITNESS:** I -- I think everyone gets the
14:41:23 22 same search, but I don't know that.

14:41:25 23 **BY MR. RUPP:**

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14:41:25 1 **Q.** All right. So what type of search did
14:41:27 2 Mr. Kistner get?
14:41:28 3 **A.** I was not present for the search.
14:41:31 4 **Q.** Are you sure?
14:41:32 5 **A.** There's a curtain.
14:41:34 6 **Q.** All right. Well, there's a difference
14:41:36 7 between having a curtain obstructing your view and
14:41:39 8 not being present for the search.
14:41:40 9 **A.** I don't know if I was in the room or
14:41:42 10 not.
14:41:42 11 **Q.** You don't remember?
14:41:43 12 **A.** I don't remember.
14:41:43 13 **Q.** Okay. But you might have been.
14:41:45 14 **A.** I may have been.
14:41:46 15 **Q.** And Velez might have been too.
14:41:48 16 **A.** Usually -- and, again, this is --
14:41:50 17 usually one of us stays in the room and one goes
14:41:53 18 through to continue on with the paperwork.
14:41:55 19 **Q.** How long did the paperwork take at
14:41:57 20 central booking?
14:41:58 21 **A.** I don't --
14:41:59 22 **Q.** You want to look at 4A?
14:42:07 23 **A.** Looks like we were on scene at CB at

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14:42:11 1 1548, according to dispatch's log, and then
14:42:16 2 location change, 1636.

14:42:19 3 Q. Now, when you -- you already told me
14:42:21 4 about some of the communications you had with
14:42:24 5 Mr. Kistner or the conversation, comments that you
14:42:27 6 overheard at the first visit to ECMC.

14:42:29 7 When you took him from ECMC to central
14:42:31 8 booking, he's driving in your patrol vehicle,
14:42:33 9 right, in the back?

14:42:34 10 A. He's in the back, yes.

14:42:35 11 Q. Is he saying anything?

14:42:38 12 A. I don't remember.

14:42:38 13 Q. Okay.

14:42:39 14 A. He may have.

14:42:39 15 Q. But you didn't record any more comments
14:42:43 16 that he said about you being a feminazi or anything
14:42:46 17 like that, right, did he?

14:42:47 18 A. There's -- I believe there's a 71030
14:42:50 19 statement that would probably more clarify it.

14:42:52 20 Q. Okay. But did that 7 -- did that
14:42:55 21 statement reference any conversations you had with
14:42:57 22 him in the patrol vehicle, as you were transporting
14:43:00 23 him?

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14:43:00 1 **A.** I don't remember, without looking at
14:43:02 2 the 71030, where that would have taken place. It
14:43:06 3 may have.

14:43:06 4 **Q.** How about at central booking? Were
14:43:09 5 you -- you were there with him for part of the
14:43:10 6 time. You might have been behind a curtain or
14:43:11 7 maybe not in the room, but how was he acting at
14:43:14 8 central booking?

14:43:14 9 **A.** I don't remember.

14:43:15 10 **Q.** Did you hear him say, at central
14:43:19 11 booking, that you had hit him with your patrol car?

14:43:21 12 **A.** I don't remember.

14:43:21 13 **Q.** All right. What kind of a search did
14:43:24 14 Mr. Kistner undergo at central booking?

14:43:27 15 **MS. HUGGINS:** Form.

14:43:27 16 **THE WITNESS:** I don't know. That wouldn't
14:43:30 17 be something that I would handle.

14:43:32 18 **BY MR. RUPP:**

14:43:32 19 **Q.** Well, did -- was he strip searched?
14:43:35 20 Do you know?

14:43:35 21 **A.** I don't know.

14:43:36 22 **Q.** Okay. You don't know how that
14:43:37 23 procedure happens?

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14:43:37 1 **A.** I know how the procedure happens.

14:43:39 2 I don't know how -- I --

14:43:43 3 **Q.** Well, what would be the normal
14:43:44 4 procedure for somebody brought in, charged with
14:43:47 5 what Mr. Kistner is charged with?

14:43:48 6 **A.** I can tell you I've been present for
14:43:50 7 female searches.

14:43:51 8 **Q.** Okay. Obviously there's a different
14:43:55 9 body type, but do they differ in terms of the
14:43:57 10 manner in which they're conducted?

14:43:59 11 **A.** I don't believe so.

14:44:00 12 **Q.** Okay. So when you've been present for
14:44:02 13 female searches, were they strip searches?

14:44:04 14 **A.** Yes.

14:44:04 15 **Q.** Okay. So do you have reason to believe
14:44:06 16 then that Mr. Kistner was strip searched?

14:44:10 17 **A.** He may have been.

14:44:11 18 **Q.** Okay. In fact, you think he was.

14:44:12 19 **MS. HUGGINS:** Form.

14:44:12 20 **THE WITNESS:** I -- again, I wasn't -- I
14:44:14 21 wouldn't have seen that. Whether I was in the room
14:44:17 22 or not, I don't even remember.

14:44:18 23 **BY MR. RUPP:**

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14:44:18 1 **Q.** But I'm not asking if you saw it. I'm
14:44:20 2 asking if you know from -- how many people have you
14:44:23 3 taken to central booking under arrest?

14:44:24 4 **A.** I couldn't -- I couldn't guess.

14:44:25 5 **Q.** Scores?

14:44:28 6 **A.** I mean --

14:44:29 7 **Q.** Scores?

14:44:30 8 **A.** Scores?

14:44:30 9 **Q.** 20s? Hundreds?

14:44:32 10 **A.** Oh, I would say over a hundred.

14:44:34 11 **Q.** Over a hundred. Okay.

14:44:35 12 And those that you were able to see, were
14:44:38 13 they all strip searched?

14:44:40 14 **A.** I believe so.

14:44:41 15 **Q.** Okay. So as you sit here, although you
14:44:44 16 may not have seen Mr. Kistner because of the
14:44:46 17 curtain, you believe he was strip searched.

14:44:49 18 **MS. HUGGINS:** Form.

14:44:49 19 **THE WITNESS:** It makes sense that he was.

14:44:51 20 **BY MR. RUPP:**

14:44:51 21 **Q.** Okay. And what other types of searches
14:44:54 22 did he undergo in the -- in the room there with the
14:44:58 23 technicians?

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14:44:58 1 **A.** I don't know.

14:44:58 2 **Q.** Based on your experience.

14:45:00 3 Well, what else? What other than a strip

14:45:02 4 search?

14:45:02 5 **MS. HUGGINS:** Form.

14:45:03 6 **THE WITNESS:** That's -- I mean, I can go

14:45:05 7 through -- like I said, I can go through --

14:45:05 8 **BY MR. RUPP:**

14:45:05 9 **Q.** Please --

14:45:06 10 **A.** -- what a female --

14:45:07 11 **Q.** Please do.

14:45:07 12 **A.** -- would have done, but --

14:45:09 13 **Q.** Sure. Go ahead.

14:45:10 14 **A.** Again, depending on the cell block

14:45:13 15 attendant, you have to remove your shirt, your

14:45:18 16 pants, your shoes, your socks, and there's a squat

14:45:25 17 and cough. That's what I've been present for for

14:45:31 18 females.

14:45:31 19 **Q.** All right. Have you ever seen an anal

14:45:34 20 cavity search performed?

14:45:35 21 **A.** No.

14:45:35 22 **Q.** Never?

14:45:36 23 **A.** No.

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14:45:36 1 **Q.** Okay. Do you know if Mr. Kistner had

14:45:39 2 one?

14:45:39 3 **A.** I don't know that.

14:45:40 4 **Q.** Okay. All right. And what else

14:45:44 5 happens at -- at central booking?

14:45:46 6 You said he would be -- mug shots were

14:45:49 7 taken. They were taken, right?

14:45:50 8 **A.** After the search is done, then

14:45:53 9 fingerprints would be taken.

14:45:54 10 **Q.** Fingerprints are next? Okay.

14:45:56 11 And were they taken of Mr. Kistner, to the

14:45:59 12 best of your knowledge?

14:45:59 13 **A.** To the best of my knowledge, they would

14:46:01 14 be, yes.

14:46:01 15 **Q.** Were you present there?

14:46:02 16 **A.** That -- that, I don't remember.

14:46:03 17 **Q.** Did you speak to anybody when you were
14:46:04 18 at central booking? Did you talk to the technicians?

14:46:07 19 **A.** I may have.

14:46:08 20 **Q.** Okay. Did you -- did you know anybody
14:46:09 21 else at central booking that you spoke to?

14:46:11 22 **A.** Not that I remember.

14:46:12 23 **Q.** Okay. How about Officer Velez?

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14:53:55 1 so that's --

14:53:56 2 Q. But I'm giving --

14:53:56 3 A. That's what I'm --

14:53:57 4 Q. -- a different scenario.

14:53:58 5 A. Right.

14:53:58 6 Q. I'm saying your SUV --

14:53:58 7 A. And I'm saying, in your scenario, an
14:54:00 8 accident didn't happen, so then --

14:54:00 9 Q. Well, I'm saying --

14:54:01 10 A. -- why would it be determined an
14:54:03 11 accident if one didn't happen?

14:54:05 12 Q. Well, right, but that's just based on
14:54:07 13 your belief that it wasn't an accident, right?

14:54:09 14 A. And the other three officers on scene.

14:54:11 15 Q. Well, but how many of them saw it?

14:54:12 16 A. Saw the accident?

14:54:13 17 Q. Yeah.

14:54:13 18 A. I -- I -- from the conversation that
14:54:16 19 I remember, I spoke with Officer Schultz. I don't
14:54:20 20 remember about the other two officers.

14:54:21 21 Q. Right. You already told me about Velez
14:54:23 22 and Moriarity. You don't know whether they saw
14:54:25 23 anything, right?

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14:54:26 1 **A.** That would be their conversation to
14:54:27 2 have.

14:54:28 3 **Q.** Right. But, I mean, if -- if you
14:54:30 4 rear-end somebody in a police SUV, there's going to
14:54:32 5 be an investigation, right?

14:54:33 6 **MS. HUGGINS:** Form.

14:54:33 7 **THE WITNESS:** Because an accident actually
14:54:35 8 took place, yes.

14:54:36 9 **BY MR. RUPP:**

14:54:36 10 **Q.** Right. But if you then convince the
14:54:39 11 lieutenant that the person backed into you
14:54:41 12 intentionally to cause damage to your SUV, then you
14:54:43 13 won't be investigated, right?

14:54:45 14 **MS. HUGGINS:** Form.

14:54:45 15 **THE WITNESS:** Not necessarily.

14:54:46 16 **BY MR. RUPP:**

14:54:46 17 **Q.** Okay. But in this case, that's exactly
14:54:49 18 what happened. The lieutenant, without coming to
14:54:51 19 the scene, decided: This isn't an accident, you're
14:54:53 20 not going to be investigated.

14:54:54 21 **MS. HUGGINS:** Form.

14:54:55 22 **BY MR. RUPP:**

14:54:55 23 **Q.** Right?

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14:54:55 1 **A.** Based on what I told him, yes.

14:54:57 2 **Q.** That's right. Okay. All right.

14:55:00 3 So you finish at central booking. Does

14:55:03 4 anything else happen aside from mug shots,

14:55:05 5 fingerprints, and the search that we discussed?

14:55:10 6 **A.** Sign paperwork, and that's -- that's
14:55:14 7 it.

14:55:14 8 **Q.** Okay. And when in this process was
14:55:19 9 Mr. Kistner given his appearance ticket?

14:55:22 10 **A.** At central booking.

14:55:23 11 **Q.** Okay. And was he released at that
14:55:27 12 time?

14:55:27 13 **A.** He was released to us.

14:55:29 14 **Q.** Okay. For what purpose?

14:55:31 15 **A.** We then transported him back up to
14:55:33 16 ECMC.

14:55:33 17 **Q.** Why?

14:55:34 18 **A.** For a psychological evaluation.

14:55:37 19 **Q.** Okay. On what -- under what authority
14:55:40 20 and on what basis?

14:55:41 21 **A.** Under the 941, if you have the
14:55:44 22 paperwork, we -- there's quite a few reasons why
14:55:47 23 based on his behavior and his actions.

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14:55:50 1 Q. Okay. And what were those behaviors
14:55:52 2 and actions?

14:55:54 3 A. If I could --

14:55:56 4 Q. Well, I'm asking you now from your
14:55:57 5 memory.

14:55:58 6 A. From my memory?

14:56:00 7 Q. Yep.

14:56:00 8 A. There were a lot of things. He was
14:56:04 9 very fixated on -- he was very fixated on a couple
14:56:13 10 topics that he continued on again and again and
14:56:16 11 again.

14:56:16 12 Like I said, calling people Nazis, and
14:56:21 13 there -- there were some other derogatory terms
14:56:23 14 that, again, I would have to look at the --

14:56:23 15 Q. And where -- where was this?

14:56:25 16 A. -- 71030.

14:56:26 17 Q. Any -- anywhere other than at ECMC the
14:56:29 18 first time?

14:56:31 19 A. I believe at central booking as well.

14:56:34 20 Q. Okay. He might have -- so, okay,
14:56:35 21 I thought I asked you about that, but did he --
14:56:38 22 what else did he -- what did he say?

14:56:39 23 How was he acting and what did he say at

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14:56:42 1 central booking?

14:56:42 2 **MS. HUGGINS:** Form.

14:56:43 3 **THE WITNESS:** It -- it wasn't just based on
14:56:45 4 one -- his behavior at one given time. It was
14:56:47 5 based on his behavior, a collective of events from
14:56:51 6 that day.

14:56:52 7 **BY MR. RUPP:**

14:56:52 8 **Q.** Well, starting with your indication
14:56:57 9 that he flung himself at the SUV, right?

14:57:01 10 **A.** Yes.

14:57:01 11 **Q.** Okay. And then apparently continuing
14:57:04 12 with some of the statements he made at ECMC,
14:57:10 13 including the Nazi statements, correct?

14:57:13 14 **A.** Yes, that's part of it.

14:57:14 15 **Q.** Okay. Anything else in this universe
14:57:16 16 of reasons why he's going for the 941 evaluation?

14:57:20 17 **A.** Like I said, he was very fixated on
14:57:23 18 a couple different topics.

14:57:24 19 **Q.** Well, what were they?

14:57:27 20 **A.** I don't recall without looking at
14:57:29 21 the -- the paper.

14:57:30 22 **Q.** All right. Let's look at the paper.

14:57:32 23 Exhibit 6 was previously marked.

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14:57:38 1 All right. So Officer Velez signs this at
14:57:42 2 the bottom of the page, right?
14:57:42 3 **A.** She prints her name, yes.
14:57:44 4 **Q.** Prints it.
14:57:44 5 You don't sign it, right?
14:57:45 6 **A.** Correct.
14:57:46 7 **Q.** So she's doing the 941 request for
14:57:48 8 examination form, correct?
14:57:49 9 **A.** Yes.
14:57:49 10 **Q.** Now, why did you switch off?
14:57:55 11 You're the primary, right?
14:57:56 12 **A.** Right.
14:57:56 13 **Q.** So why does she do this?
14:57:57 14 **A.** No real reason, other than maybe she
14:58:01 15 just filled out the paperwork. I don't recall.
14:58:04 16 **Q.** All right. So -- and it reads:
14:58:07 17 Justification for transport. Under describe any
14:58:10 18 known history of violence to self or others,
14:58:13 19 current violent behavior, and harmful or neglectful
14:58:17 20 behavior -- behavior to self or others, including
14:58:19 21 documentation of any plans, means, and acces for
14:58:23 22 suicide/harm to others, colon -- I believe this is
14:58:28 23 Officer Velez writes: Subject did intentionally

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15:02:08 1 **Q.** Okay. And that was where you told me
15:02:11 2 earlier -- you didn't mention conspiracy. You said
15:02:13 3 that he was referring to you and I guess the other
15:02:15 4 officers as Nazis and fascists.

15:02:18 5 **A.** Yes. He -- well, I remember him using
15:02:21 6 the phrases feminazis, cunts, bitches. I think
15:02:30 7 he -- he -- I mean, he used a couple other terms,
15:02:32 8 but I don't -- those are the ones that stand out to
15:02:34 9 me.

15:02:34 10 **Q.** So at the hospital, was he talking
15:02:36 11 about being the victim of a conspiracy that you
15:02:39 12 guys were covering up the fact that you had
15:02:41 13 negligently struck him with the vehicle and decided
15:02:43 14 to blame him for it?

15:02:44 15 **A.** He may have.

15:02:45 16 **Q.** Okay.

15:02:45 17 **A.** Like I said, his behavior at the
15:02:47 18 hospital to me is what stands out.

15:02:50 19 **Q.** Okay. All right. And it wasn't -- it
15:02:51 20 wasn't at central booking that was the primary
15:02:53 21 issue?

15:02:53 22 **A.** It -- it was at central booking
15:02:55 23 as well, but like I said, from what my memory is

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15:02:59 1 the hospital, there were a few particular
15:03:01 2 incidents.

15:03:02 3 **Q.** Okay.

15:03:02 4 **A.** Or a few particular things that were
15:03:05 5 said.

15:03:05 6 **Q.** Okay. So he goes to ECMC for the 941
15:03:09 7 evaluation. Are his attorneys -- do his attorneys
15:03:12 8 go with you or follow you to central booking? Do
15:03:14 9 they ever show up there? The attorneys you told me
15:03:17 10 about earlier.

15:03:17 11 **MS. HUGGINS:** Form.

15:03:19 12 **THE WITNESS:** The one attorney --

15:03:19 13 **BY MR. RUPP:**

15:03:19 14 **Q.** Yeah.

15:03:20 15 **A.** -- I talked to him at the hospital.
15:03:21 16 I don't believe I spoke with him -- I don't know
15:03:22 17 if he went to central booking. I don't believe
15:03:24 18 I spoke with him there.

15:03:25 19 **Q.** Did you tell that individual that you
15:03:27 20 had struck Mr. Kistner with your SUV?

15:03:28 21 **A.** No.

15:03:29 22 **Q.** What did you tell him?

15:03:30 23 **A.** I'm not sure what I would have -- I'm

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15:03:32 1 not sure how much information I would have divulged
15:03:36 2 to him.

15:03:36 3 Q. Did you know that attorney?

15:03:37 4 A. No.

15:03:38 5 Q. Okay. Were you the one who told him he
15:03:40 6 could not see Mr. Kistner?

15:03:42 7 A. Yes.

15:03:42 8 Q. Okay. Now, did the -- were the --
15:03:44 9 was the attorney still there when you brought
15:03:47 10 Mr. Kistner back to ECMC for the 941 psych
15:03:49 11 evaluation?

15:03:50 12 A. I don't remember.

15:03:51 13 Q. Okay. So where did you take
15:03:54 14 Mr. Kistner on this second trip to ECMC?

15:03:57 15 A. To CPEP.

15:03:59 16 Q. Okay. And did he meet with
15:04:01 17 a psychologist or a psychiatrist there at that
15:04:04 18 time?

15:04:04 19 A. We -- that was when myself and
15:04:09 20 Officer Velez -- he -- he was released at that
15:04:11 21 point.

15:04:11 22 Q. Okay. So you dropped him off and kind
15:04:13 23 of left?

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15:04:14 1 **A.** Yes. Once there -- there's a double
15:04:17 2 door that -- that's --

15:04:18 3 **Q.** I think I've seen it.

15:04:20 4 **A.** Yeah. One is locked and then the other
15:04:21 5 one has to be opened.

15:04:22 6 **Q.** So now did you -- did you talk to
15:04:24 7 anybody at CPEP as to why he was being brought in,
15:04:28 8 or did you just drop him off there with this --
15:04:30 9 I assume this form is given to them.

15:04:32 10 **A.** Right.

15:04:32 11 **Q.** Okay. But did you or Officer Velez
15:04:34 12 have any other conversations with the intake people
15:04:37 13 at CPEP as to why Mr. Kistner was being dropped
15:04:41 14 there?

15:04:42 15 **A.** We would have. I don't remember the --
15:04:45 16 the content of what was said.

15:04:47 17 **Q.** Now, you're -- you're familiar with the
15:04:48 18 concept of an involuntary psych admission to ECMC,
15:04:51 19 right? Are you not?

15:04:52 20 **A.** Yes.

15:04:52 21 **Q.** Okay. And how long does that
15:04:54 22 involuntary stay usually last, in your experience?

15:04:57 23 **A.** It depends. That -- an involuntary,

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15:05:00 1 again, that's a conversation between the person and
15:05:05 2 a doctor.

15:05:06 3 Q. Did you expect that Mr. Kistner, given
15:05:08 4 the behaviors that he had exhibited primarily at
15:05:11 5 ECMC the first time, was going to be admitted?

15:05:13 6 A. I -- that's up to the doctor to
15:05:15 7 determine.

15:05:15 8 Q. Okay. Well, my question was: Did you
15:05:17 9 expect that he would be admitted, based on your
15:05:19 10 past experience dealing with ECMC's CPEP, 941s, and
15:05:24 11 involuntary admissions?

15:05:25 12 MS. HUGGINS: Form.

15:05:26 13 THE WITNESS: I wouldn't -- I wouldn't
15:05:26 14 always be there. It -- it would depend on if the
15:05:28 15 person is in custody.

15:05:30 16 If they're in custody, then I would be there
15:05:32 17 when they speak with the doctor, and the doctor
15:05:33 18 would determine whether they would be admitted or
15:05:35 19 not.

15:05:35 20 BY MR. RUPP:

15:05:35 21 Q. Okay. But my question, again, ma'am,
15:05:37 22 was: Do you believe that he was going to be
15:05:40 23 admitted when you dropped him off there?

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15:05:41 1 **A.** I'm not a medical professional.

15:05:43 2 **Q.** Okay. Did you believe he was going to

15:05:45 3 be admitted or not?

15:05:45 4 **A.** I don't know.

15:05:46 5 **Q.** Okay. You had -- you had no opinion

15:05:48 6 one way or the other?

15:05:48 7 **A.** It's not for me to determine.

15:05:50 8 **Q.** Did you care?

15:05:51 9 **A.** It's -- I mean, care in terms of?

15:05:54 10 **Q.** Yeah. Did you -- did you wish that --

15:05:56 11 one outcome versus the other?

15:05:58 12 Did you want to see him admitted, or did you

15:06:00 13 want to see him go home?

15:06:02 14 **A.** I think that he needed help and that's

15:06:04 15 what I wanted him to get.

15:06:06 16 **Q.** Okay. So you would have liked to

15:06:07 17 see -- you would have liked to have seen him

15:06:11 18 admitted.

15:06:11 19 **MS. HUGGINS:** Form.

15:06:12 20 **THE WITNESS:** I wanted to see him get help.

15:06:14 21 **BY MR. RUPP:**

15:06:14 22 **Q.** Okay. And you took him to ECMC psych

15:06:16 23 ward to get that help, right?

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15:25:37 1 **Q.** You wrote or somebody wrote and you
15:25:38 2 adopted it with your signature: In that the
15:25:41 3 defendant, while at 37 Schmarbeck, did, with intent
15:25:44 4 to damage the property of another person.

15:25:47 5 I'm going to stop there. Your -- your view
15:25:49 6 is that Mr. Kistner not only threw himself at your
15:25:54 7 vehicle, but that he intended to damage it.

15:25:56 8 **A.** Yes.

15:25:57 9 **Q.** Okay. So -- and what is the basis for
15:26:00 10 your conclusion in that regard that he wanted to
15:26:04 11 damage your vehicle, as opposed to damage himself,
15:26:06 12 or assuming what you say his true, how did you know
15:26:09 13 that he intended to damage your vehicle?

15:26:12 14 **A.** That was my perception of the events
15:26:14 15 that took place.

15:26:15 16 **Q.** Okay. So you thought he was trying to
15:26:17 17 damage your vehicle as opposed to himself or both
15:26:19 18 or what?

15:26:22 19 **A.** I -- I don't know if he was intending
15:26:25 20 to injure himself. I perceived that that could be
15:26:29 21 a very strong possibility. But, yes, I did -- I do
15:26:33 22 believe that he was intending to damage the -- the
15:26:34 23 vehicle.

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15:26:35 1 Q. But you -- you could see that somebody
15:26:37 2 who's intending on hurting themselves might cause
15:26:40 3 damage to something but not intend that damage.
15:26:43 4 They're trying to hurt themselves, right?

15:26:45 5 MS. HUGGINS: Form.

15:26:45 6 THE WITNESS: Could be.

15:26:46 7 BY MR. RUPP:

15:26:46 8 Q. Okay. Or you could have somebody who's
15:26:49 9 trying to do damage but doesn't want to hurt
15:26:52 10 themselves. Would you agree that that's
15:26:53 11 a possibility?

15:26:53 12 A. It's possible.

15:26:54 13 Q. Okay. But in this case, based on your
15:26:56 14 recent testimony, it was your conclusion that he --
15:26:58 15 he may have wanted to hurt himself, but he
15:27:01 16 definitely wanted to damage your SUV; is that
15:27:03 17 right?

15:27:03 18 A. That's what I believe.

15:27:04 19 Q. Okay. And that was based on your
15:27:06 20 perception of seeing him put out his hand and do
15:27:09 21 the turn and the head thing that we talked about
15:27:12 22 earlier at length.

15:27:13 23 A. Yes.

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15:27:13 1 **Q.** Okay. Any other basis for that
15:27:15 2 statement that you signed under oath and under
15:27:17 3 penalty of perjury?

15:27:18 4 **A.** No.

15:27:18 5 **Q.** Okay. All right. So continuing along:
15:27:22 6 The City of Buffalo Police Department, and having
15:27:24 7 no right to do so, nor any reasonable ground to
15:27:28 8 believe that he had such right, did damage the
15:27:30 9 property, to wit, driver's side mirror and driver's
15:27:33 10 side mirror of patrol vehicle, in the amount of
15:27:36 11 more than \$250.

15:27:38 12 And I've already kind of asked you about
15:27:39 13 that, right?

15:27:40 14 **A.** Yes.

15:27:40 15 **Q.** But by the time -- I'll update my
15:27:42 16 questions to the time you signed this form drawn up
15:27:46 17 by the technician, you had no more information
15:27:49 18 about the value of the alleged damage to vehicle
15:27:54 19 473 than when I -- than when I asked you that
15:27:56 20 question before, right?

15:27:58 21 **A.** Right.

15:27:58 22 **Q.** Okay. So you still haven't done any
15:28:01 23 inquiry, not been -- gotten an estimate, not taken

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15:28:04 1 it to the police garage, anything like that?

15:28:06 2 **A.** Correct.

15:28:06 3 **Q.** Okay. Then you say, in that the
15:28:08 4 defendant did intentionally throw his body into the
15:28:11 5 driver's side mirror of patrol vehicle 473, causing
15:28:14 6 the mirror to become dislodged from the vehicle and
15:28:17 7 also causing the driver's side window to malfunction.

15:28:20 8 And I don't know if I asked you this
15:28:22 9 specific question, but if -- if those things were
15:28:24 10 true, you would expect that there would be repair
15:28:27 11 records relative to that on that vehicle, right?

15:28:29 12 **MS. HUGGINS:** Form.

15:28:29 13 **BY MR. RUPP:**

15:28:30 14 **Q.** Unless it was never fixed, right?

15:28:31 15 **A.** I would expect there to be a record of
15:28:33 16 it.

15:28:33 17 **Q.** Okay. I'm going to represent to you
15:28:35 18 that the City of Buffalo has not turned over any
15:28:37 19 repair records showing that the mirror was fixed or
15:28:39 20 the driver's side window was fixed. Do you know
15:28:41 21 why?

15:28:41 22 **A.** I do not know why.

15:28:43 23 **Q.** Okay. All right. The value of said

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15:28:44 1 damage to exceed \$250. The defendant did cause
15:28:47 2 said damage to the above-mentioned property without
15:28:49 3 the permission of the owner.

15:28:51 4 And the owner is what? The City of Buffalo?

15:28:54 5 **A.** Yes.

15:28:54 6 **Q.** Okay. All right. Okay. Let's turn
15:29:02 7 the page, and the next one, for disorderly conduct,
15:29:04 8 on page 2 of Exhibit 17, reads that that's
15:29:07 9 a violation, as opposed to a felony.

15:29:10 10 It says, the said defendant, at the
15:29:13 11 aforesaid time and place, with intent to cause
15:29:16 12 public inconvenience, annoyance, or alarm, or
15:29:20 13 recklessly creating a risk thereof, while in
15:29:23 14 a public place, did use abusive or obscene
15:29:27 15 language, or made an obscene gesture.

15:29:29 16 We haven't talked about gestures. Did
15:29:31 17 Mr. Kistner make any obscene gestures that you
15:29:34 18 remember?

15:29:34 19 **A.** I don't remember.

15:29:35 20 **Q.** Okay. In the time that you saw him
15:29:37 21 from the moment that he was handcuffed and brought
15:29:40 22 to his feet by some officers, was -- was he in
15:29:44 23 handcuffs the entire time?

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15:29:47 1 **A.** I'm -- I'm sorry. Could you say

15:29:49 2 that --

15:29:49 3 **Q.** Did you ever see him out of handcuffs
15:29:51 4 from the time he was first handcuffed, until you
15:29:53 5 took him, say, to central booking?

15:29:55 6 **A.** He was cuffed to the hospital bed with
15:29:57 7 one hand.

15:29:58 8 **Q.** Okay. So was he making gestures with
15:30:01 9 the other hand or --

15:30:01 10 **A.** I don't remember.

15:30:02 11 **Q.** Okay. So why did you say, did use
15:30:05 12 abusive or obscene language or made an obscene
15:30:07 13 gesture?

15:30:08 14 **A.** That's just the verbiage that is typed
15:30:10 15 up according to the penal law charge.

15:30:12 16 **Q.** Okay. So you don't remember him making
15:30:13 17 any obscene gestures. He didn't flip anybody the
15:30:17 18 bird or give them the finger or anything.

15:30:18 19 **A.** I don't remember.

15:30:19 20 **Q.** Okay. And you wouldn't have charged
15:30:21 21 him with something you didn't remember, right?

15:30:22 22 **A.** Right. That's just -- like I said,
15:30:25 23 that's the -- the verbiage that the report --

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15:30:27 1 report technicians type up according to the penal
15:30:28 2 law charge.

15:30:29 3 Q. Well, I know that, but you said it, so
15:30:32 4 I just want to make sure that you don't recall him
15:30:34 5 making any gestures.

15:30:35 6 A. I don't remember.

15:30:36 7 Q. Okay. In that the defendant did
15:30:38 8 intentionally throw his body into the driver's side
15:30:40 9 mirror, et cetera, and so forth.

15:30:41 10 And that is language that's replicated from
15:30:46 11 the criminal mischief charge, right?

15:30:49 12 A. Yes.

15:30:49 13 MS. HUGGINS: Form.

15:30:50 14 BY MR. RUPP:

15:30:51 15 Q. All right. So why is that in the
15:30:52 16 disorderly conduct charge?

15:30:53 17 A. Again, that's -- the report
15:30:55 18 technicians, that's the way that they type up
15:30:57 19 charges. That's -- that's how they type it.

15:31:00 20 Q. Okay. So could you have made changes
15:31:02 21 to this, if you wanted to?

15:31:03 22 A. Yes.

15:31:03 23 Q. Okay. You didn't ask them to make any

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15:31:05 1 | changes?

15:31:05 2 | **A.** I did not.

15:31:06 3 Q. Okay. So was the disorderly conduct
15:31:09 4 charge, in your view, because he had thrown his
15:31:12 5 body at the driver's side mirror of your vehicle?

15:31:14 6 **A.** No. The disorderly conduct was
15:31:16 7 pertaining to the next sentence.

15:31:18 8 Q. Okay. All right. So that's in here
15:31:21 9 kind of extraneously, would you agree?

15:31:24 10 **A.** Again, I don't know the guidelines that
15:31:27 11 the report -- report technicians type up their
15:31:29 12 charges.

15:31:30 13 **MR. RUPP:** Okay. All right. I'm going to
15:31:37 14 ask that this be marked.

15 The following was marked for Identification:

16 EXH. 18 Fleet management maintenance
17 work order

18 BY MR. RUPP:

15:32:16 19 Q. All right. Ms. McDermott, I'm going to
15:32:19 20 show you Exhibit 18 for identification. First of
15:32:20 21 all, have you seen a form similar to this one
15:32:24 22 before in your work as a police officer for BPD?

15:32:27 23 A. I have not.

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15:32:28 1 **Q.** Okay. So you're not really familiar
15:32:30 2 with this form then.

15:32:31 3 **A.** Correct.

15:32:31 4 **Q.** Okay. But do you see that it purports
15:32:34 5 to relate to unit 473, which is your unit, a Tahoe?

15:32:39 6 **A.** Yes, I see that.

15:32:40 7 **Q.** Being a 2014, is that -- does that also
15:32:44 8 ring a bell?

15:32:45 9 **A.** Yes.

15:32:45 10 **Q.** Okay. Being in for service four days
15:32:48 11 after the incident involving Mr. Kistner. Do you
15:32:49 12 see that?

15:32:50 13 **A.** Yes.

15:32:50 14 **Q.** And indication that there was
15:32:53 15 apparently work done on the cooling system, some
15:32:58 16 R/R water pump, and the serpentine belt. Do you
15:33:02 17 see that?

15:33:02 18 **A.** Yes.

15:33:02 19 **Q.** Would you agree with me there's no
15:33:04 20 references to a mirror or a driver's side front
15:33:08 21 window?

15:33:09 22 **A.** Correct.

15:33:09 23 **Q.** Okay. Do you know of any other repair

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15:33:11 1 records that would verify your under-oath statement
15:33:15 2 that the driver's side mirror and the -- well, the
15:33:25 3 driver's side mirror was broken, causing damage of
15:33:31 4 more than \$250?

15:33:33 5 **A.** I don't know of any other maintenance --

15:33:35 6 **Q.** All right.

15:33:36 7 **A.** -- paperwork, no.

15:33:37 8 **MR. RUPP:** Okay. All right. Let's have
15:33:48 9 this marked.

10 **The following was marked for Identification:**

11 **EXH. 19** **Buffalo Police dispatch**
12 **monitor - unit history**
13 **report**

14 **BY MR. RUPP:**

15:34:34 15 **Q.** All right. Showing you what has been
15:34:36 16 marked Exhibit 19 for identification, this is --
15:34:38 17 purports to be the dispatch monitor unit history
15:34:42 18 report for you, who are referred to as unit C241.
15:34:46 19 Do you see that?

15:34:47 20 **A.** Yes.

15:34:47 21 **Q.** Okay. And that's Officer Lauren
15:34:50 22 McDermott. And that -- that number 172768, what is
15:34:53 23 that?

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15:34:54 1 **A.** That's my DID number.
15:34:56 2 **Q.** What does that stand for?
15:34:59 3 **A.** It's my --
15:35:00 4 **Q.** Department ID?
15:35:01 5 **A.** Yes.
15:35:01 6 **Q.** Okay. And have you had that same
15:35:03 7 number since you joined the BPD?
15:35:05 8 **A.** Yes.
15:35:05 9 **Q.** And do you still have it today?
15:35:07 10 **A.** Yes.
15:35:07 11 **Q.** Okay. It doesn't change with your
15:35:09 12 position.
15:35:10 13 **A.** Correct.
15:35:10 14 **Q.** Okay. So this shows that you were
15:35:12 15 dispatched to Schmarbeck on January 1, 2017, at
15:35:18 16 10:57 a.m. Is that -- do you know if you were
15:35:21 17 there before that or after that or --
15:35:27 18 **A.** I believe that's when Officer Schultz
15:35:29 19 called it out.
15:35:29 20 **Q.** Okay.
15:35:31 21 **A.** When -- yeah.
15:35:32 22 **Q.** You were -- you already think you were
15:35:35 23 there before that?

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15:35:35 1 **A.** I believe so.

15:35:36 2 **Q.** Okay. And I'm not going to go back

15:35:38 3 through 4A again. I'm just going to see if I can

15:35:41 4 link this up.

15:35:43 5 So this doesn't have the seconds, just

15:35:47 6 the -- the minutes on it, right?

15:35:48 7 **A.** Yes.

15:35:49 8 **Q.** Okay. And 4A does show you as being

15:35:53 9 en route/dispatched at the 10:57 mark.

15:35:58 10 **A.** Along with -- yes. Yes, it does.

15:36:00 11 **Q.** Along -- along with Officer Velez,

15:36:03 12 of course.

15:36:03 13 **A.** Yes.

15:36:03 14 **Q.** Okay. Okay. And this shows your shift

15:36:05 15 ending at 6:16, so I guess that answers the question

15:36:09 16 that we saw on the second page of whether your

15:36:13 17 overtime that day was -- was just, you know,

15:36:17 18 a few minute -- 45 minutes after your quitting time

15:36:20 19 or -- or over two hours after.

15:36:21 20 **A.** This is, again, based on what dispatch

15:36:25 21 is logging.

15:36:26 22 **Q.** Oh, so this would -- so the payroll

15:36:29 23 would be what governs.

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15:59:22 1 **Q.** Do you know why Officer Schultz went
15:59:25 2 back to the SUV?

15:59:25 3 **A.** I don't.

15:59:27 4 **Q.** Do you know if he was running Earl's
15:59:29 5 license?

15:59:29 6 **A.** He may have been.

15:59:31 7 **Q.** Would that be police procedure?

15:59:35 8 **A.** It might be. I mean, I don't --

15:59:38 9 **Q.** To see if he has a warrant or
15:59:39 10 something?

15:59:40 11 **A.** I -- I don't know why he would have, if
15:59:42 12 that's what he was even doing.

15:59:50 13 **Q.** Was Earl detained at this point, or was
15:59:52 14 he free to go?

15:59:54 15 **A.** From what I'm watching, it appears he's
15:59:56 16 free to go, but I don't remember.

15:59:59 17 **Q.** Do you know if he had been given back
16:00:00 18 his possessions?

16:00:01 19 **A.** I don't know.

16:00:03 20 **Q.** Do you know why they were taken from
16:00:04 21 him?

16:00:05 22 **A.** I do not.

16:00:16 23 **Q.** Do you know if at this point or by this

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16:00:17 1 point Mr. Kistner had complained of being injured?

16:00:20 2 **MS. HUGGINS:** Form.

16:00:20 3 **THE WITNESS:** I don't remember.

16:00:21 4 **BY MR. RUPP:**

16:00:23 5 **Q.** Do you know why it took -- why there
16:00:25 6 was this delay in taking him to the hospital?

16:00:27 7 **A.** I don't know.

16:00:30 8 **Q.** Do you think he should have been taken
16:00:32 9 to the hospital?

16:00:33 10 **A.** I don't remember what the conversation
16:00:36 11 was or if he had complained of injury yet. I don't
16:01:16 12 remember.

16:01:16 13 **Q.** Do you remember anything Earl said?

16:01:18 14 **A.** I don't.

16:01:20 15 **Q.** Do you remember anything that was said
16:01:21 16 by anyone to Earl?

16:01:22 17 **A.** I don't remember.

16:01:23 18 **Q.** Did you speak to Earl?

16:01:26 19 **A.** I may have. I don't remember.

16:01:29 20 **Q.** Okay. Did you see an officer returning
16:01:34 21 some items to Earl?

16:01:34 22 **A.** Yes.

16:01:35 23 **Q.** Do you know which officer that was?

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16:01:36 1 **A.** Could you go back? I think it was
16:01:39 2 Moriarity walked back from the patrol vehicle.
16:01:43 3 Moriarity.
16:01:52 4 **Q.** Is that the one with the hat?
16:01:54 5 **A.** Yes.
16:01:54 6 **Q.** Okay. Are you in this picture?
16:02:17 7 **A.** I think that's Officer Velez.
16:02:20 8 **Q.** Do you know what's being discussed?
16:02:22 9 **A.** I don't.
16:02:30 10 **Q.** Who's that gesturing and looking back
16:02:34 11 south on Scharmbbeck?
16:02:36 12 **A.** I think it's Officer Velez.
16:02:46 13 **Q.** Did you ever see Officer Moriarity
16:02:48 14 writing something down? Writing a note?
16:02:53 15 **A.** You'd have to play it again.
16:02:56 16 **Q.** Well, do you remember seeing that at
16:02:57 17 the scene?
16:02:58 18 **A.** I don't remember it from that day.
16:03:03 19 **Q.** Do you remember having any -- any
16:03:05 20 conversations with anybody in the home at
16:03:08 21 37 Scharmbbeck?
16:03:12 22 **A.** I don't believe I ever went inside.
16:03:13 23 **Q.** Well, I didn't ask you that.

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16:03:15 1 Did anybody call out the window or purport
16:03:20 2 to speak to the officers on the street from
16:03:22 3 37 Scharmbbeck?

16:03:23 4 **A.** I believe a woman yelled out the
16:03:25 5 window, but I don't remember if I was the one that
16:03:26 6 responded or not.

16:03:27 7 **Q.** Do you remember what she said?

16:03:28 8 **A.** I don't.

16:03:30 9 **Q.** Do you remember anybody saying that you
16:03:32 10 were on camera?

16:03:34 11 **A.** I remember knowing that there was
16:03:37 12 a camera. I just don't remember how that
16:03:40 13 information was told to me. If she yelled that or
16:03:43 14 if someone else said it that day, I -- I don't
16:03:46 15 remember, but I remember it being told to me.

16:03:51 16 **Q.** Do you have an opinion about
16:03:53 17 surveillance cameras?

16:03:56 18 **A.** No.

16:04:14 19 **Q.** In the upper left-hand corner, we see
16:04:16 20 some officers. Do you know what's being discussed?

16:04:18 21 **A.** No.

16:04:19 22 **Q.** Do you have any recollection, from the
16:04:20 23 time Mr. Kistner was placed in the 532 patrol

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16:04:24 1 vehicle, what any officers were discussing with
16:04:26 2 each other?

16:04:27 3 **A.** No.

16:05:02 4 **Q.** Do you know why Mr. Kistner is not
16:05:04 5 being transported to the hospital?

16:05:05 6 **A.** I don't.

16:05:08 7 **Q.** Is this type of delay usual?

16:05:12 8 **MS. HUGGINS:** Form.

16:05:13 9 **THE WITNESS:** It would depend on the
16:05:15 10 situation.

16:05:16 11 **BY MR. RUPP:**

16:05:17 12 **Q.** Would the situation be that you were
16:05:19 13 all talking to each other to get your stories
16:05:20 14 straight?

16:05:21 15 **MS. HUGGINS:** Form.

16:05:21 16 **THE WITNESS:** No.

16:05:56 17 **BY MR. RUPP:**

16:05:56 18 **Q.** Are you shown in the picture as it
16:05:58 19 reads at 10:34:12?

16:06:00 20 **A.** Am I shown?

16:06:01 21 **Q.** Yeah.

16:06:01 22 **A.** I'm not sure if that's -- I think that
16:06:03 23 might be Officer Velez up in the left-hand corner.

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16:06:09 1 I can't tell if that's her or me.

16:06:09 2 Q. Okay.

16:06:15 3 A. I think that's Officer Velez.

16:06:53 4 MR. RUPP: All right. Thank you,

16:06:54 5 Ms. McDermott. I have no further questions.

16:07:11 6 MS. HUGGINS: I have no questions.

16:07:13 7 MR. RUPP: Okay. We're done.

8 (Proceedings of 2/19/20 were then concluded
9 at 4:07 p.m.)

10 * * *

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1 I hereby CERTIFY that I have read the
2 foregoing 400 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on February 19, 2020.

7

8

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LAUREN McDERMOTT

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

19

ANNE T. BARONE, RPR,
Notary Public.

20

21

22

23

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EXHIBIT H

**VIDEO DEPOSITION
KYLE T. MORIARTY**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

1 Video deposition of **KYLE T. MORIARITY**,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 21, 2020, commencing at
6 10:09 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8

9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By CHAD DAVENPORT, ESQ.,
12 1600 Liberty Building,
13 Buffalo, New York 14202,
14 (716) 854-3400,
15 davenport@ruppbaase.com,
16 Appearing for the Plaintiff.
17

18 TIMOTHY A. BALL, ESQ.,
19 Corporation Counsel,
20 By MAEVE E. HUGGINS, ESQ.,
21 Assistant Corporation Counsel,
22 1137 City Hall,
23 Buffalo, New York 14202,
24 (716) 851-4334,
25 mhuggins@city-buffalo.com,
26 Appearing for the Defendants.

27 PRESENT: JAMES KISTNER
28 NOLAN HALE, Rupp Baase
29 Pfalzgraf & Cunningham, LLC
30 TIMOTHY M. HUNT, CLVS, Videographer
31

09:43:42

10:07:53 1 **THE REPORTER:** Read and sign?

10:07:56 2 **MS. HUGGINS:** 45 days, please.

10:07:57 3 **THE REPORTER:** And Ms. Huggins will be

10:08:00 4 supplied?

10:08:00 5 **MR. DAVENPORT:** Yes.

10:08:01 6 **THE REPORTER:** Thank you.

10:08:01 7

10:09:53 8 **K Y L E T. M O R I A R I T Y,** 695 Main Street,

10:10:06 9 Buffalo, New York, after being duly called and

10:10:06 10 sworn, testified as follows:

10:10:11 11

10:10:11 12 **EXAMINATION BY MR. DAVENPORT:**

10:10:11 13

10:10:15 14 **Q.** Good morning, Mr. Moriarity.

10:10:16 15 **A.** Good morning.

10:10:16 16 **Q.** My name is Chad Davenport. I'm an

10:10:18 17 attorney with Rupp Baase Pfalzgraf & Cunningham,

10:10:21 18 representing the plaintiff.

10:10:23 19 So we're here today to discuss a -- an

10:10:26 20 incident that happened on January 1st, 2017.

10:10:29 21 Before we start, I just want to explain

10:10:31 22 a few of the ground rules for this deposition.

10:10:33 23 So our discussion today is being transcribed

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10:28:38 1 Q. Where were these other police officers?

10:28:40 2 Where were they located?

10:28:42 3 Were they also in the C District, or were
10:28:44 4 they in other districts?

10:28:45 5 A. No. No. They were in other districts
10:28:47 6 too.

10:28:47 7 Q. Okay. Were they all field training
10:28:49 8 officers?

10:28:50 9 A. No. These were probationary officers.

10:28:54 10 Q. They were probationary officers?

10:28:56 11 So what kinds of things would you observe on
10:28:58 12 these cameras?

10:29:00 13 MS. HUGGINS: Form.

10:29:03 14 THE WITNESS: At -- at the time, I would say
10:29:07 15 I didn't -- we didn't really know what we were
10:29:09 16 looking at. It was just people walking around.

10:29:11 17 BY MR. DAVENPORT:

10:29:12 18 Q. Did they ever say, you know, this
10:29:14 19 person's committing a crime? You know, we need to
10:29:18 20 dispatch police officers over into that area?

10:29:20 21 A. No. It was just us in the room. There
10:29:23 22 was no one --

10:29:24 23 Q. So what kinds of --

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10:29:25 1 **A.** -- with us.

10:29:26 2 **Q.** -- things were you guys looking for on

10:29:28 3 those cameras?

10:29:31 4 **A.** I don't remember at the time. We

10:29:32 5 weren't given much instruction.

10:29:34 6 **Q.** Okay. Were you instructed to take

10:29:36 7 notes on what you saw?

10:29:38 8 **A.** We were.

10:29:39 9 **Q.** And did you have to turn those notes

10:29:41 10 over to a lieutenant or anybody else to check your

10:29:43 11 work?

10:29:43 12 **A.** No.

10:29:44 13 **Q.** You just kept those for yourself?

10:29:46 14 **A.** I threw mine out, I believe.

10:29:48 15 **Q.** Okay. Did you have to report to

10:29:49 16 anybody what you saw on those cameras?

10:29:51 17 **A.** No.

10:29:53 18 **Q.** Did you have any cameras that were

10:29:55 19 located on Schmarbeck Avenue?

10:29:58 20 **A.** No.

10:30:01 21 **Q.** Where, typically, would these cameras

10:30:04 22 be located?

10:30:05 23 Would they be mostly at busy intersections

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10:30:07 1 or businesses?

10:30:08 2 **MS. HUGGINS:** Form.

10:30:10 3 **THE WITNESS:** I don't know the rhyme or
10:30:13 4 reason to where the cameras are placed.

10:30:16 5 **BY MR. DAVENPORT:**

10:30:17 6 **Q.** So this is what you would have done
10:30:19 7 from December 1st, 2016, to December 29th of 2016,
10:30:23 8 correct?

10:30:24 9 **A.** I don't know if it's exactly until the
10:30:26 10 29th. I got my vest a week -- a week or so before
10:30:33 11 the incident.

10:30:34 12 **Q.** Okay.

10:30:36 13 **A.** So --

10:30:36 14 **Q.** So you would have received that either
10:30:39 15 shortly before or right around Christmas of 2016?

10:30:42 16 **A.** Yeah.

10:30:44 17 **Q.** Did you immediately go out into the
10:30:46 18 field after that?

10:30:46 19 **A.** Yes.

10:30:47 20 **Q.** Who did you go out with?

10:30:49 21 Who -- who was, you know, taking you around
10:30:51 22 to help you with your training?

10:30:53 23 **A.** Police Officer Schultz.

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10:30:55 1 **Q.** Did you do any other training with any
10:30:56 2 other officers at that time?

10:30:58 3 **A.** No.

10:30:59 4 **Q.** How long did your training last for?

10:31:01 5 **A.** 16 weeks.

10:31:03 6 **Q.** And so that 16 weeks would have been
10:31:06 7 beginning on November 4th of 2016, or would it have
10:31:10 8 been beginning when you received your vest in
10:31:14 9 December of 2016?

10:31:14 10 **A.** The day I received my vest.

10:31:17 11 **Q.** Okay. And so those 16 weeks were just
10:31:19 12 with Officer Schultz?

10:31:21 13 **A.** Yes.

10:31:24 14 **Q.** What kinds of things would you -- what
10:31:27 15 kinds of calls would you make with Officer Schultz?

10:31:30 16 **A.** Our calls --

10:31:32 17 **MS. HUGGINS:** Form.

10:31:33 18 **THE WITNESS:** Our calls varied. Shootings,
10:31:37 19 domestics, car accidents, unknown troubles.

10:31:42 20 **BY MR. DAVENPORT:**

10:31:43 21 **Q.** Do you remember the first week of
10:31:44 22 training with Officer Schultz?

10:31:47 23 **A.** I remember the first day.

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10:31:48 1 **Q.** The first day? What happened on the
10:31:51 2 first day?

10:31:51 3 **A.** There was a shots fired on Deshler.

10:31:54 4 **Q.** Did you respond to that call?

10:31:56 5 **A.** Yes.

10:31:56 6 **Q.** With Officer Schultz?

10:31:58 7 **A.** Yes.

10:31:59 8 **Q.** What was the outcome of that call?

10:32:03 9 **A.** Afternoon -- the afternoon shift took
10:32:07 10 it over, and me and Karl Schultz left around
10:32:13 11 10 minutes before 4 because we were done.

10:32:16 12 **Q.** Were you working the day shift at the
10:32:17 13 time then?

10:32:18 14 **A.** We were working the day shift, yeah.

10:32:19 15 **Q.** Did you work the day shift after your
10:32:22 16 first 16 weeks?

10:32:23 17 **A.** No. I went to afternoons.

10:32:24 18 **Q.** Afternoon shift?

10:32:25 19 Did you work any other shifts besides
10:32:26 20 day shift and afternoon shift?

10:32:28 21 **A.** No.

10:32:30 22 **Q.** So what time, approximately, did you
10:32:33 23 recall to that call on your first day?

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10:52:07 1 Received might mean that that's when 911
10:52:12 2 gets it to dispatch.

10:52:14 3 Q. So what is the difference between 911
10:52:17 4 and dispatch?

10:52:19 5 A. Someone calls 911 and then 911 will
10:52:23 6 give it to dispatch to give to us.

10:52:25 7 Q. What does 911 refer to?

10:52:27 8 A. 911 is where the 91 -- 911 call goes
10:52:32 9 to.

10:52:33 10 Q. Okay. And where does it go to?

10:52:35 11 A. Wherever that office is. I have no
10:52:37 12 idea.

10:52:37 13 Q. Okay. And then dispatch is the Buffalo
10:52:42 14 Police Department?

10:52:42 15 A. Yes.

10:52:43 16 Q. Okay. So now there's a 20-minute gap
10:52:47 17 in between it going from 911 to dispatch with the
10:52:52 18 Buffalo Police Department?

10:52:53 19 A. Yes.

10:52:54 20 Q. Okay. Is that typical for 20 minutes
10:52:58 21 to elapse before --

10:53:00 22 A. Yes.

10:53:00 23 MS. HUGGINS: Form.

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10:53:02 1 **BY MR. DAVENPORT:**

10:53:02 2 Q. Is there a certain type of call that
10:53:04 3 wouldn't take 20 minutes?

10:53:05 4 A. Shootings.

10:53:07 5 Q. Okay. And what would be the typical
10:53:10 6 response time for that?

10:53:11 7 **MS. HUGGINS:** Form.

10:53:15 8 **THE WITNESS:** It's -- it's one of those
10:53:16 9 things you just go to immediately.

10:53:18 10 **BY MR. DAVENPORT:**

10:53:18 11 Q. Okay. Okay. So now when it says
10:53:24 12 dispatched, does that refer to dispatch receiving
10:53:27 13 it, or does that refer to somebody accepting that
10:53:30 14 call from dispatch?

10:53:31 15 **MS. HUGGINS:** Form.

10:53:32 16 **THE WITNESS:** Someone accepting the call
10:53:35 17 from dispatch.

10:53:35 18 **BY MR. DAVENPORT:**

10:53:36 19 Q. And would that somebody be a police
10:53:38 20 officer in the C District?

10:53:39 21 A. Yes.

10:53:42 22 Q. Do you know if you were responding to
10:53:44 23 another call at that time?

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10:53:46 1 **A.** I don't.

10:53:48 2 **Q.** So turning back to Exhibit 7 on the
10:53:50 3 dispatch monitor, it looks like you would have been
10:53:55 4 on scene at 145 Sprenger Avenue?

10:54:00 5 **A.** Yeah.

10:54:00 6 **Q.** Do you see that?

10:54:01 7 **A.** Yes.

10:54:02 8 **Q.** And then it's -- it look -- it appears
10:54:05 9 that you would have been on scene starting at
10:54:07 10 9:27, until would that be 10:56 when you became
10:54:12 11 available?

10:54:12 12 **A.** Yes.

10:54:12 13 **Q.** Okay. So turning back towards Exhibit 3,
10:54:21 14 what type of call was it that you responded to at
10:54:25 15 33 Schmarbeck?

10:54:26 16 **A.** Larceny.

10:54:29 17 **Q.** And do you remember the nature of that
10:54:30 18 call?

10:54:30 19 **A.** I don't.

10:54:33 20 **Q.** Do you remember the individual that you
10:54:34 21 spoke to that day?

10:54:35 22 **A.** No.

10:54:38 23 **Q.** When it says that the location is

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10:54:40 1 1800 Broadway and that -- what does that refer
10:54:40 2 to?

10:54:47 3 Do you see on --

10:54:48 4 **A.** Oh, yeah. I don't know what that
10:54:51 5 refers to.

10:54:53 6 **Q.** Okay. And then when it says the phone
10:54:55 7 number, do you know what that refers to?

10:54:58 8 **A.** That's the phone number that was used
10:54:59 9 to call 911.

10:55:01 10 **Q.** That would have been the complainant's
10:55:02 11 phone call?

10:55:03 12 **A.** Yeah.

10:55:03 13 **Q.** Okay. So at 10:33, the entry says,
10:55:11 14 male, known, took items from his home.

10:55:13 15 Do you know what that entry would refer to?

10:55:16 16 **A.** Whoever the complainant is knows the
10:55:18 17 male who took items from his home.

10:55:20 18 **Q.** Now, would that information have been
10:55:22 19 conveyed to you who that individual was that took
10:55:26 20 the items from this individual's home?

10:55:28 21 **MS. HUGGINS:** Form.

10:55:29 22 **THE WITNESS:** The -- yeah. I mean, the --
10:55:33 23 the complainant would have -- would have told me.

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10:55:35 1 BY MR. DAVENPORT:

10:55:35 2 Q. Do you remember if the complainant told
10:55:37 3 you who took the items from his home?

10:55:39 4 A. I don't remember.

10:55:40 5 Q. Okay. Do you remember if dispatch told
10:55:42 6 you who the individual was that took items from his
10:55:45 7 home?

10:55:45 8 A. No, I don't remember.

10:55:46 9 Q. But that's what that entry refers to is
10:55:50 10 that it's known who the individual was that took
10:55:52 11 items from this complainant's home?

10:55:54 12 A. Yes.

10:55:56 13 Q. Okay. So now the next entry that
10:55:59 14 I want you to look at is en route, C230.

10:56:03 15 What does that refer to?

10:56:04 16 A. We are en route to the location.

10:56:07 17 Q. So when you say we, that refers to Karl
10:56:10 18 Schultz and you?

10:56:11 19 A. Yes.

10:56:12 20 Q. Was your call sign C230?

10:56:15 21 A. Yes.

10:56:15 22 Q. And that's how it would appear on these
10:56:18 23 complaint summary reports?

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11:18:19 1 **A.** No.

11:18:20 2 **Q.** No?

11:18:21 3 Do you know who this individual is walking
11:18:30 4 out of the van?

11:18:30 5 And I would say for the record that the time
11:18:32 6 stamp is 9:53:16. You don't have to verify the
11:18:36 7 time, but the individual who is now walking out of
11:18:38 8 the van, do you -- do you remember this individual?

11:18:44 9 **A.** I don't remember.

11:18:45 10 **Q.** Do you remember talking to that
11:18:47 11 individual on January 1st of 2017?

11:18:49 12 **A.** I do not.

11:18:55 13 **Q.** Do you remember what type of a call it
11:18:56 14 was that you responded to on January 1st of 2017,
11:19:01 15 at 33 Schmarbeck?

11:19:02 16 **A.** From the complaint summary report, it
11:19:04 17 was a larceny.

11:19:05 18 **Q.** Do you remember anything about that
11:19:07 19 call besides what's written on the complaint
11:19:09 20 summary report?

11:19:09 21 **A.** I don't.

11:19:12 22 **Q.** Do you remember how that call was
11:19:14 23 initiated?

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11:19:16 1 **A.** I -- I -- I don't. It says that it was
11:19:18 2 dispatched.

11:19:21 3 **Q.** And dispatched refers to you accepting
11:19:23 4 the call and going to that call, correct?

11:19:25 5 **A.** Yes.

11:19:26 6 **Q.** But the 911 call was made by the
11:19:28 7 individual, Mike Wolfe?

11:19:29 8 **MS. HUGGINS:** Form.

11:19:30 9 **THE WITNESS:** I don't know if it was Mike
11:19:34 10 Wolfe, but someone -- someone called 911.

11:19:37 11 **BY MR. DAVENPORT:**

11:19:38 12 **Q.** If I told you that the individual who
11:19:39 13 made the call was Mike Wolfe, would you have any
11:19:41 14 reason to dispute what I say?

11:19:44 15 **MS. HUGGINS:** Form.

11:19:46 16 **BY MR. DAVENPORT:**

11:19:46 17 **Q.** Would you have any reason to believe
11:19:48 18 that it was somebody besides Mike Wolfe?

11:19:49 19 **MS. HUGGINS:** Form.

11:19:50 20 **THE WITNESS:** No, but I also don't remember.

11:19:58 21 **MR. DAVENPORT:** All right.

11:20:01 22 **MS. HUGGINS:** Do you want to indicate for
11:20:02 23 the record what exhibit you've played?

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11:20:05 1 **MR. DAVENPORT:** Yes.

11:20:05 2 So for the record, I played the first video
11:20:08 3 of Exhibit A that was turned over to the City as
11:20:10 4 part of our complaint. The last four digits of
11:20:16 5 that video file -- can you go back to it, please?

11:20:23 6 The last four digits of that video file are
11:20:25 7 5252.

11:20:28 8 We are now turning to the second video file
11:20:31 9 of Exhibit A that was provided to the City as part
11:20:35 10 of the plaintiff's complaint. The last four digits
11:20:40 11 are 1342.

11:20:43 12 **MS. HUGGINS:** The exhibit number, just for
11:20:45 13 the purposes of the deposition.

11:20:46 14 **MR. DAVENPORT:** This exhibit number is
11:20:48 15 Exhibit number 11.

11:20:51 16 **MS. HUGGINS:** Thank you.

11:20:59 17 (Video clip played.)

11:20:59 18 **BY MR. DAVENPORT:**

11:20:59 19 **Q.** Do you see the three digits that are on
11:21:02 20 top of that police vehicle?

11:21:03 21 **A.** Yeah. It's kind of clear.

11:21:07 22 **Q.** And what are those three digits?

11:21:12 23 **A.** I know the -- I know the truck to be

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11:21:15 1 532.

11:21:16 2 Oh, that's clear now. Yeah, 532.

11:21:18 3 Q. Do you recognize that police vehicle?

11:21:19 4 A. Yes.

11:21:20 5 Q. And what do you recognize it as?

11:21:22 6 A. Buffalo Police vehicle.

11:21:24 7 Q. Have you ever been in that vehicle

11:21:26 8 before?

11:21:26 9 A. Yes.

11:21:28 10 Q. How many times before January 1st?

11:21:31 11 A. I'm -- yeah. I'm unsure.

11:21:33 12 Q. Were you in that vehicle after

11:21:36 13 January 1st of 2017?

11:21:37 14 A. Yeah.

11:21:39 15 Q. Was that a car that you would typically

11:21:41 16 use during your shifts at C District?

11:21:44 17 A. No. We -- we change depending on what

11:21:49 18 goes to the garage because it's broke.

11:21:51 19 Q. Okay. Was there a typical vehicle that

11:21:53 20 you would drive?

11:21:55 21 A. This was Karl's assigned truck.

11:22:00 22 Q. Okay. So Karl Schultz would typically

11:22:03 23 drive this truck then?

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11:22:04 1 **A.** Yeah. Yeah.

11:22:04 2 **Q.** So during your first 16 weeks of

11:22:06 3 training, this was the vehicle that you were using?

11:22:08 4 **A.** Unless it was at the garage, yes.

11:22:11 5 **Q.** Okay. Now, the video shows that you

11:22:15 6 drove past the red van at first. Do you know why

11:22:18 7 you drove past that red van?

11:22:20 8 **A.** I do not.

11:22:21 9 **Q.** The video also shows now, at 10:14, in

11:22:24 10 the top corner, that you were now backing up the

11:22:27 11 vehicle down Schmarbeck to where the red van is.

11:22:30 12 Do you know why you did that?

11:22:30 13 **MS. HUGGINS:** Form.

11:22:31 14 **THE WITNESS:** I don't.

11:22:32 15 **BY MR. DAVENPORT:**

11:22:33 16 **Q.** Were you going to this individual who

11:22:36 17 was out in the -- the sidewalk at this point?

11:22:39 18 **A.** I -- I don't remember, but it looks

11:22:43 19 that way.

11:22:47 20 **Q.** Now, you parked behind the red van.

11:22:49 21 Was there any reason that you would have done that?

11:22:53 22 **A.** Safety.

11:22:54 23 **Q.** And what would that safety reason have

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11:22:56 1 been?

11:22:58 2 **A.** I mean, so I can see someone in case
11:23:02 3 they're going to shoot me or something.

11:23:03 4 **Q.** Okay. And who would that person have
11:23:05 5 been?

11:23:06 6 **MS. HUGGINS:** Form.

11:23:07 7 **THE WITNESS:** Yeah. That -- that's just
11:23:09 8 a -- a general safety thing, so, I mean, I'm pretty
11:23:14 9 sure that that's the complainant for the call.

11:23:18 10 **BY MR. DAVENPORT:**

11:23:18 11 **Q.** Okay. So it wasn't necessarily that
11:23:20 12 you were driving behind the red van. You were
11:23:22 13 trying to get a visual on the individual who was
11:23:23 14 standing on the sidewalk, correct?

11:23:25 15 **A.** Yeah.

11:23:26 16 **Q.** Okay.

11:23:26 17 **A.** In the safest way.

11:23:27 18 **Q.** And that was a safety procedure?

11:23:30 19 **A.** Yeah.

11:23:30 20 **Q.** Was that something that Karl Schultz
11:23:32 21 told you to do?

11:23:33 22 **A.** I -- I don't think he told me to do
11:23:36 23 anything, no.

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11:23:37 1 **Q.** Was that part of your training with the
11:23:39 2 ECC, Erie County Training Academy?
11:23:43 3 **A.** No, not really.
11:23:43 4 **Q.** Was that part of your training with
11:23:45 5 Buffalo Police Academy?
11:23:48 6 **A.** No, not really.
11:23:49 7 **Q.** So was that something that you were
11:23:51 8 ever taught by ECC or the Buffalo Police Academy?
11:23:54 9 **A.** No.
11:23:55 10 **Q.** So that was just something that you did
11:23:56 11 on your own?
11:23:57 12 **A.** Yes.
11:23:57 13 **Q.** Okay. Who's that individual who's
11:24:01 14 getting out of the police vehicle?
11:24:03 15 **A.** Looks like it's me.
11:24:04 16 **Q.** Were you driving that day?
11:24:07 17 **A.** Yes.
11:24:08 18 **Q.** Did you drive the entire day, or did
11:24:10 19 Karl Schultz drive at any point?
11:24:13 20 **A.** I don't --
11:24:13 21 **Q.** On January 1st of 2017?
11:24:16 22 **A.** I don't know if I drove the whole day.
11:24:19 23 **Q.** During your first 16 weeks of training,

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11:24:21 1 who predominantly did most of the driving?

11:24:26 2 **A.** The whole 16 weeks, I would say
11:24:29 3 predominantly it was me.

11:24:30 4 **Q.** Okay. Was there any reason why you
11:24:32 5 drove instead of Karl?

11:24:34 6 **A.** So I can learn the streets.

11:24:36 7 **Q.** Okay. Did he give you any sort of
11:24:40 8 directions on where to go and how to go to a call?

11:24:42 9 **A.** Tons of directions.

11:24:44 10 **Q.** Okay. Do you have any sort of a GPS in
11:24:46 11 your vehicle?

11:24:48 12 **A.** They have a map on the computer that we
11:24:52 13 use, but we do not use it for GPS.

11:24:56 14 **Q.** Okay. What do you use that map for?

11:25:01 15 **A.** I -- I never used the map.

11:25:05 16 **Q.** Okay.

11:25:05 17 **A.** But people learn how to GPS calls that
11:25:09 18 way. You can also identify where other officers
11:25:12 19 are.

11:25:12 20 **Q.** Okay. So you had a pretty good
11:25:16 21 understanding of all the streets on C District and
11:25:18 22 you didn't use the map?

11:25:18 23 **A.** No, I didn't --

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11:25:19 1 **MS. HUGGINS:** Form.

11:25:20 2 **THE WITNESS:** I didn't have a good
11:25:21 3 understanding at all. Karl said it's better to
11:25:23 4 learn the streets by driving them rather than
11:25:27 5 GPS-ing them and staring at a computer.

11:25:29 6 **BY MR. DAVENPORT:**

11:25:29 7 **Q.** Okay. Would Karl then give you oral
11:25:32 8 directions of where to drive?

11:25:33 9 **A.** Yes.

11:25:33 10 **Q.** Okay. And you never referred to that
11:25:35 11 map during your first 16 weeks then?

11:25:39 12 **A.** I can't say never, but I was --

11:25:43 13 **Q.** Do you refer to that map at all?

11:25:44 14 **MS. HUGGINS:** Well --

11:25:45 15 **MR. DAVENPORT:** He said never.

11:25:46 16 **MS. HUGGINS:** I wasn't sure if he was
11:25:48 17 finished answering.

11:25:49 18 **THE WITNESS:** I can't say -- I can't say
11:25:50 19 never, but we really tried hard to stay away from
11:25:55 20 it.

11:25:56 21 **BY MR. DAVENPORT:**

11:25:57 22 **Q.** Okay. After your first 16 weeks, have
11:25:58 23 you ever used the map to go respond to a call?

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11:26:02 1 **A.** Not to respond to a call, but to find
11:26:05 2 out where an officer was.

11:26:06 3 **Q.** Okay. So now you're walking behind the
11:26:13 4 police vehicle; is that accurate?

11:26:15 5 **A.** Yeah.

11:26:15 6 **Q.** Was there any reason why you walked
11:26:17 7 behind the police vehicle rather than in front?

11:26:22 8 **A.** I don't -- I don't remember that day.

11:26:24 9 **Q.** Do you remember any difficulty with
11:26:26 10 walking on the Schmarbeck Drive that day?

11:26:30 11 **MS. HUGGINS:** Form.

11:26:31 12 **THE WITNESS:** Can you explain that?

11:26:33 13 **BY MR. DAVENPORT:**

11:26:34 14 **Q.** Was it icy? Was it slippery?

11:26:44 15 **A.** I don't remember.

11:26:45 16 **Q.** Okay.

11:26:46 17 **A.** I don't -- I don't remember.

11:26:47 18 **Q.** Okay. What kinds of shoes were you
11:26:50 19 wearing that day?

11:26:51 20 **A.** Boots.

11:26:52 21 **Q.** Boots?

11:26:53 22 Did you ever have difficulty walking on
11:26:55 23 streets with those boots?

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11:26:57 1 **A.** Sometimes .
11:26:58 2 **Q.** Sometimes ?
11:26:58 3 And when would that be?
11:27:00 4 **A.** Like snow, icy, Buffalo conditions.
11:27:03 5 **Q.** Did you see any snow on the street that
11:27:05 6 day?
11:27:05 7 **A.** No .
11:27:06 8 **Q.** Any ice?
11:27:07 9 **A.** It's not that clear, but, yeah, I don't
11:27:13 10 know.
11:27:13 11 **Q.** But as you sit here today, you don't
11:27:16 12 remember any difficulty with walking that day,
11:27:18 13 correct?
11:27:18 14 **A.** No. There was no -- not for me.
11:27:20 15 **Q.** Okay. Now, it seems that you are
11:27:28 16 approaching the individual who is standing on the
11:27:30 17 sidewalk; is that correct?
11:27:31 18 **A.** Yes.
11:27:31 19 **Q.** Why is it just you that is going out to
11:27:34 20 go speak with that individual?
11:27:38 21 **A.** Excuse me. I -- I don't remember.
11:27:42 22 I think Karl was letting me deal with a low-priority
11:27:46 23 call.

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11:27:47 1 **Q.** And how was that determined to be a
11:27:49 2 low-priority call?

11:27:52 3 **A.** I mean, there's a lot of variables.
11:27:55 4 You look at officer safety. There's -- it -- it
11:27:58 5 says right here priority 5, whereas a shooting
11:28:01 6 would be priority 1.

11:28:02 7 **Q.** Sure.

11:28:03 8 **A.** Things like that.

11:28:04 9 I'm not saying that a priority 5 can't go in
11:28:08 10 a southern direction, but assessing the video and
11:28:14 11 assessing the scene, you can kind of determine.

11:28:18 12 **Q.** Now, prior to January 1st, 2017, have
11:28:22 13 you ever -- had you ever responded to a call on
11:28:24 14 Schmarbeck and spoken with this individual?

11:28:26 15 **A.** I don't -- I don't remember.

11:28:28 16 **Q.** Do you recall if after January 1st,
11:28:33 17 2017, did you ever respond to a call on Schmarbeck
11:28:35 18 and speak with this individual?

11:28:36 19 **A.** No.

11:28:37 20 **Q.** Now, at this point you know that you're
11:28:39 21 responding to a larceny or a theft, correct?

11:28:42 22 **A.** Yes.

11:28:43 23 **Q.** What's part of the normal procedure for

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11:28:46 1 responding to a larceny or theft?

11:28:48 2 Is there a typical procedure that you would
11:28:49 3 follow?

11:28:50 4 **MS. HUGGINS:** Form.

11:28:54 5 **THE WITNESS:** I want to get the complainant's
11:28:55 6 name, date of birth, phone number, address, and
11:28:58 7 then find out the story of what had happened.

11:29:01 8 **BY MR. DAVENPORT:**

11:29:01 9 **Q.** And how would you get that information?

11:29:04 10 **A.** Just by talking to him.

11:29:06 11 **Q.** Would you have to get any sort of
11:29:08 12 identification or anything else to verify what the
11:29:11 13 complainant is telling you?

11:29:12 14 **A.** ID.

11:29:13 15 **Q.** ID? Is that typical?

11:29:15 16 **A.** Yes.

11:29:15 17 **Q.** Did you do that on this occasion?

11:29:18 18 **A.** I don't -- I don't remember.

11:29:20 19 **Q.** Would you have to look at the
11:29:22 20 license plate number for the vehicle? Would --
11:29:25 21 what would Karl Schultz be -- excuse me. Strike
11:29:28 22 that.

11:29:28 23 What would Karl Schultz be doing in the

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11:29:30 1 vehicle at this point?

11:29:31 2 **MS. HUGGINS:** Form.

11:29:31 3 **THE WITNESS:** I don't -- I don't know what
11:29:32 4 Karl Schultz could be doing right now.

11:29:34 5 **BY MR. DAVENPORT:**

11:29:34 6 **Q.** I'm not asking what could he be doing.
11:29:37 7 I would be asking more so what should he be doing,
11:29:40 8 if he's not going out to go speak with the
11:29:42 9 individual?

11:29:42 10 **MS. HUGGINS:** Form.

11:29:43 11 **THE WITNESS:** I -- I think he's just letting
11:29:45 12 me -- me handle a low-priority call to see how I do
11:29:52 13 on it.

11:29:52 14 **BY MR. DAVENPORT:**

11:29:52 15 **Q.** Assuming --

11:29:53 16 **A.** And evaluate me. He's evaluating me.

11:29:56 17 **Q.** I'm sorry.

11:29:56 18 So assuming that he wasn't evaluating you
11:29:58 19 and that you were out with a partner, somebody
11:30:01 20 who's not in training, would two officers go speak
11:30:06 21 with the individual or would just one officer go
11:30:09 22 speak with the individual?

11:30:09 23 **MS. HUGGINS:** Form.

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11:49:48 1 property from a police -- from a landlord, whether
11:49:51 2 that be in your personal capacity or official
11:49:53 3 capacity?

11:49:55 4 **MS. HUGGINS:** Form.

11:49:55 5 **THE WITNESS:** I wouldn't -- yeah, no,
11:49:58 6 I don't think so.

11:49:58 7 **BY MR. DAVENPORT:**

11:49:59 8 **Q.** Now, at this time, did you know if
11:50:01 9 the individual had a valid driver's license at
11:50:05 10 33 Schmarbeck?

11:50:06 11 **A.** From -- from the video that you played
11:50:09 12 for me, I don't -- I didn't see myself on there
11:50:12 13 ever checking his ID, so I don't really know if
11:50:15 14 I did check his ID or not.

11:50:17 15 **Q.** As part of your normal procedure for
11:50:21 16 responding to a -- an accusation of larceny or
11:50:25 17 theft, would you ever have to check the license
11:50:28 18 plate on a -- a vehicle that is at the location --

11:50:28 19 **A.** If --

11:50:32 20 **Q.** -- of the --

11:50:33 21 **A.** If it's apparent that the vehicle was
11:50:36 22 involved, then yes.

11:50:39 23 **Q.** Do you recall if on January 1st of 2017,

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11:50:42 1 you had checked the license plate of that red van?

11:50:45 2 **A.** I don't remember.

11:50:46 3 **Q.** Would there be any sort of a document
11:50:49 4 that would depict whether you had checked the
11:50:52 5 license of that red van or not?

11:50:58 6 **A.** I would say -- I would say no.

11:51:04 7 I don't -- I mean, just by the video, again,
11:51:08 8 I don't know if I -- I don't know what the rest
11:51:09 9 of the video showed, so I don't remember if -- if
11:51:14 10 I did anything else with the complainant.

11:51:18 11 **Q.** Do you recall, as you sit here today,
11:51:22 12 or do you know, as you sit here today, whether that
11:51:24 13 red van belonged to the complainant or not?

11:51:26 14 **A.** I do not know.

11:51:29 15 **Q.** So I'm going to ask you a few questions
11:51:32 16 about what happened immediately after that call to
11:51:35 17 33 Schmarbeck.

11:51:38 18 Do you recall an individual walking out into
11:51:44 19 the street after you responded to that call at
11:51:46 20 33 Schmarbeck?

11:51:46 21 **MS. HUGGINS:** Form.

11:51:47 22 **THE WITNESS:** The videos that we reviewed,
11:51:51 23 yes, I remember, based off the videos we reviewed.

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11:51:54 1 **BY MR. DAVENPORT:**

11:51:54 2 **Q.** But that's only based off of what you
11:51:56 3 saw in the videos?

11:51:59 4 **A.** Yeah, I mean, I don't -- again, this
11:52:01 5 was a very, very long time ago, and I was very new.

11:52:06 6 **Q.** As you sit here today, do you know who
11:52:08 7 that individual was that's depicted in the video
11:52:11 8 walking out in the street?

11:52:12 9 **MS. HUGGINS:** Form.

11:52:13 10 **THE WITNESS:** Yes.

11:52:13 11 **BY MR. DAVENPORT:**

11:52:14 12 **Q.** And who is that individual?

11:52:15 13 **A.** Mr. Kistner.

11:52:18 14 **Q.** Okay. Do you remember any of the
11:52:19 15 details of a conversation that could have been had
11:52:24 16 between you and Mr. Kistner or Mr. Schultz and
11:52:27 17 Mr. Kistner when he was out in the street?

11:52:30 18 **A.** I don't think I had a conversation with
11:52:34 19 Mr. Kistner.

11:52:35 20 **Q.** Did Mr. Schultz say anything to
11:52:39 21 Mr. Kistner?

11:52:41 22 **A.** No, I don't -- I don't -- I don't think
11:52:45 23 so. Not when we were trying to drive off.

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11:52:48 1 Q. Why were you trying to drive off as
11:52:51 2 there was an individual in the street?

11:52:53 3 MS. HUGGINS: Form.

11:52:54 4 THE WITNESS: At the time, he wasn't
11:52:57 5 involved with our call, so we were leaving.

11:52:59 6 BY MR. DAVENPORT:

11:52:59 7 Q. Did he ask to speak to the officers at
11:53:01 8 that time?

11:53:02 9 A. I don't know if he said anything to us.

11:53:04 10 Q. Do you know if he said anything to
11:53:06 11 Ms. McDermott or Ms. Velez?

11:53:11 12 A. I -- yeah, I don't know. I wouldn't --

11:53:13 13 MS. HUGGINS: Form.

11:53:13 14 THE WITNESS: I don't remember.

11:53:15 15 BY MR. DAVENPORT:

11:53:16 16 Q. Now, do you recall, as you sit here
11:53:20 17 today, even if it was the video that helped to
11:53:23 18 refresh your recollection, did you drive past the
11:53:25 19 individual who was out in the street?

11:53:27 20 A. I did drive past him, yeah.

11:53:29 21 Q. And how long were you driving -- how
11:53:31 22 far past that individual did you drive?

11:53:34 23 A. I don't remember how -- how far.

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11:53:36 1 **Q.** Even based off of the video that you
11:53:41 2 saw, would you know approximately how far that you
11:53:44 3 drove?

11:53:44 4 **MS. HUGGINS:** Form.

11:53:44 5 **THE WITNESS:** I can't -- I can't judge
11:53:46 6 distance like that.

11:53:47 7 **BY MR. DAVENPORT:**

11:53:48 8 **Q.** Do you know approximately how fast you
11:53:49 9 were driving?

11:53:49 10 **A.** I -- I don't know how fast I was
11:53:51 11 driving. I know from -- it's a small street.
11:53:56 12 I can't get up too high in speeds.

11:53:59 13 **Q.** How long is Schmarbeck Avenue?

11:54:02 14 **A.** I wouldn't -- I wouldn't be able to
11:54:03 15 tell you that. It's a small city street, though.

11:54:06 16 **Q.** Okay. Is it a one way or a two way?

11:54:09 17 **A.** Two way.

11:54:11 18 **Q.** Were there any other cars that were
11:54:13 19 coming in the opposite direction from you?

11:54:15 20 **MS. HUGGINS:** Form.

11:54:16 21 **THE WITNESS:** I mean, from what the video
11:54:19 22 you guys have, it didn't show any.

11:54:23 23 **BY MR. DAVENPORT:**

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11:54:24 1 **Q.** It didn't show any other vehicles
11:54:26 2 coming in the opposite direction?

11:54:27 3 **A.** It didn't show any, yeah, coming in the
11:54:31 4 opposite direction, that I remember.

11:54:32 5 **Q.** Do you normally wear your seat belt as
11:54:36 6 you're driving?

11:54:38 7 **A.** Sometimes.

11:54:40 8 **Q.** And that's driving a police vehicle,
11:54:42 9 sometimes you wear a seat belt?

11:54:44 10 **MS. HUGGINS:** Form.

11:54:45 11 **THE WITNESS:** Yeah, sometimes.

11:54:46 12 **BY MR. DAVENPORT:**

11:54:47 13 **Q.** What situations would you wear
11:54:49 14 a seat belt?

11:54:51 15 **MS. HUGGINS:** Form.

11:54:55 16 **THE WITNESS:** Situations where I remember or
11:55:00 17 I think it's icy or something.

11:55:04 18 **BY MR. DAVENPORT:**

11:55:05 19 **Q.** As a police officer, are you required
11:55:06 20 to wear a seat belt?

11:55:10 21 **MS. HUGGINS:** Form.

11:55:13 22 **THE WITNESS:** I'm not sure actually if it's
11:55:15 23 in our Manual of Procedures.

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11:55:56 1 **Q.** With any of the other officers that you
11:55:58 2 have been with in their -- in the vehicle, have any
11:56:00 3 of those officers worn a seat belt in the police
11:56:03 4 vehicle that you were driving?

11:56:04 5 **A.** Yeah, some do.

11:56:05 6 **MS. HUGGINS:** Form.

11:56:06 7 **BY MR. DAVENPORT:**

11:56:08 8 **Q.** Now, when you were driving -- when you
11:56:13 9 typically go to go drive a vehicle, do you check
11:56:16 10 any of your mirrors before you pull away?

11:56:19 11 **A.** Yes.

11:56:19 12 **Q.** What mirrors do you check?

11:56:21 13 **A.** I check all of them because a lot of
11:56:23 14 people are different heights.

11:56:24 15 **Q.** Okay. Now, do you check your mirror to
11:56:27 16 see what's around you or just to make sure that you
11:56:30 17 are able to see and you have a good vantage point
11:56:33 18 for looking through your mirrors?

11:56:35 19 **MS. HUGGINS:** Form.

11:56:35 20 **THE WITNESS:** To make sure I have a good
11:56:37 21 vantage point and I can see other cars and people
11:56:40 22 and whatnot.

11:56:41 23 **BY MR. DAVENPORT:**

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11:56:42 1 **Q.** Okay. Do you check your left mirror?

11:56:43 2 Your driver's side mirror?

11:56:44 3 **A.** Yes.

11:56:44 4 **Q.** Do you check your passenger side

11:56:45 5 mirror?

11:56:45 6 **A.** Yes.

11:56:46 7 **Q.** And then do you check your rearview

11:56:48 8 mirror?

11:56:48 9 **A.** Yeah.

11:56:48 10 **Q.** Do you look behind you at all?

11:56:49 11 **A.** No. You can't really see because of

11:56:52 12 the cage.

11:56:52 13 **Q.** Okay.

11:56:53 14 **A.** It's a little difficult.

11:56:54 15 **Q.** Okay. After you make that initial

11:56:56 16 check, do you ever look at your driver's side

11:56:59 17 mirror, your passenger mirror, or your rearview

11:57:02 18 mirror, as you're driving forward?

11:57:03 19 **A.** Often.

11:57:04 20 **Q.** Often?

11:57:05 21 And what are you looking for typically?

11:57:08 22 **A.** Other cars and -- and people to see

11:57:11 23 what -- what they're doing.

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11:57:12 1 **Q.** Okay. On this occasion do you recall
11:57:16 2 if you looked into your driver's side mirror or
11:57:18 3 your passenger side mirror or your rearview mirror
11:57:22 4 as you were driving away?

11:57:22 5 **MS. HUGGINS:** Form.

11:57:24 6 **THE WITNESS:** I remember looking in my
11:57:26 7 driver's side mirror.

11:57:28 8 **BY MR. DAVENPORT:**

11:57:28 9 **Q.** Okay. And why were you looking at your
11:57:31 10 driver's side mirror?

11:57:32 11 **A.** Karl told me to -- he directed my
11:57:35 12 attention to the mirror and said, hold on; let's
11:57:39 13 make sure they get out okay.

11:57:42 14 **Q.** Okay. Did you stop your vehicle at
11:57:45 15 that point?

11:57:45 16 **A.** I don't -- I don't remember.

11:57:47 17 **Q.** Okay. Were you -- were you looking
11:57:52 18 only at your driver's side mirror at that point
11:57:54 19 when Karl said, let's hold on; let's wait to see if
11:57:57 20 they make it out okay?

11:57:59 21 **A.** In between that and looking forward.

11:58:01 22 **Q.** Okay. What was the reason for Karl
11:58:06 23 saying, let's make sure that they make it out okay?

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11:58:09 1 **MS. HUGGINS:** Form.

11:58:09 2 **THE WITNESS:** At the time, I'm too new.

11:58:12 3 I don't -- I was just doing what he told me --

11:58:15 4 **BY MR. DAVENPORT:**

11:58:15 5 **Q.** Okay.

11:58:16 6 **A.** -- to do.

11:58:17 7 **Q.** Okay. With your experience that you've
11:58:20 8 gained since this incident, would there be any
11:58:22 9 reason why Karl would have told you to make sure
11:58:25 10 that they make it out okay?

11:58:27 11 **MS. HUGGINS:** Form.

11:58:27 12 **THE WITNESS:** Yeah, I mean, there could have
11:58:29 13 been a whole bunch of reasons why someone would
11:58:31 14 walk up to a police vehicle, so for officer safety,
11:58:36 15 he would have told me to look out -- look out the
11:58:39 16 mirror.

11:58:39 17 **BY MR. DAVENPORT:**

11:58:39 18 **Q.** Do you know, on January 1st, why that
11:58:42 19 individual was walking up to a police vehicle?

11:58:43 20 **MS. HUGGINS:** Form.

11:58:44 21 **THE WITNESS:** I -- I don't. I don't know.

11:58:45 22 **BY MR. DAVENPORT:**

11:58:46 23 **Q.** Did Karl Schultz know why that

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11:58:49 1 individual was walking up to a police vehicle?
11:58:50 2 **MS. HUGGINS:** Form.
11:58:50 3 **THE WITNESS:** He didn't tell me. No, I don't
11:58:53 4 know.

11:58:53 5 **BY MR. DAVENPORT:**

11:58:53 6 **Q.** Do you remember Karl Schultz ever
11:58:55 7 saying, we're leaving, to that individual?

11:59:00 8 **A.** I -- I don't. I don't remember.

11:59:03 9 **Q.** Would you have any reason to think that
11:59:04 10 he didn't say, we're leaving?

11:59:08 11 **A.** Again, I don't -- I don't remember.
11:59:11 12 I don't remember what he said.

11:59:16 13 **Q.** Now, as Karl Schultz said, wait; let's
11:59:19 14 see what happens; let's make it out of there
11:59:21 15 okay -- let's make sure that they make it out of
11:59:23 16 there okay, were you still driving forward at that
11:59:29 17 time?

11:59:29 18 **A.** I don't know if I -- I don't remember
11:59:31 19 if I was stopped or slowing to a stop or continuing
11:59:38 20 straight.

11:59:39 21 **Q.** Okay. As you were driving away -- as
11:59:49 22 your vehicle was driving away from the incident,
11:59:52 23 did you see anything that was happening behind you?

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11:59:57 1 **A.** I remember having a conversation with
11:59:59 2 Karl about how it looked like Mr. Kistner threw
12:00:05 3 himself on the vehicle. I -- I can't remember
12:00:12 4 exactly how it looked because I was so new. I just
12:00:18 5 remember having the conversation with him.

12:00:19 6 **Q.** And where did you have that
12:00:21 7 conversation?

12:00:22 8 **A.** In the -- in the police vehicle.

12:00:24 9 **Q.** Okay. Would that have been before or
12:00:26 10 after you got out of the police vehicle after the
12:00:32 11 collision was made with Mr. Kistner?

12:00:34 12 **MS. HUGGINS:** Form.

12:00:34 13 **THE WITNESS:** That would have been before.

12:00:41 14 **BY MR. DAVENPORT:**

12:00:41 15 **Q.** Okay. So the collision would have
12:00:43 16 happened, you would have been in your police
12:00:44 17 vehicle, and Karl Schultz would have told you that
12:00:48 18 Mr. Kistner threw himself at the police vehicle?

12:00:50 19 **MS. HUGGINS:** Form.

12:00:50 20 **THE WITNESS:** Like I said, I remember having
12:00:53 21 a conversation talking about it. I don't -- I don't
12:00:54 22 remember if we both said it or if he just said it,
12:00:57 23 but the conversation took place, then we exited the

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12:00:59 1 vehicle, and walked back.

12:01:01 2 **BY MR. DAVENPORT:**

12:01:01 3 **Q.** Okay. How long did that conversation
12:01:02 4 last?

12:01:04 5 **A.** It probably didn't last very long, but
12:01:08 6 I don't know an approximate time.

12:01:11 7 **Q.** Did he happen to say what your next
12:01:13 8 steps should be at that point?

12:01:16 9 **A.** I don't remember. I just -- we just
12:01:19 10 got out, I think.

12:01:24 11 **Q.** Did you exit the police vehicle because
12:01:25 12 Karl Schultz exited the police vehicle?

12:01:27 13 **A.** Yes.

12:01:28 14 **Q.** Did he tell you to exit the police
12:01:30 15 vehicle?

12:01:30 16 **A.** No. I just did it because he did it.

12:01:32 17 **Q.** As you were walking back to the scene,
12:01:34 18 did you have any personal viewpoints on what had
12:01:40 19 happened at that point?

12:01:41 20 **A.** Can you -- can you explain that? What
12:01:44 21 do you mean?

12:01:44 22 **Q.** Did you happen to view yourself any of
12:01:46 23 the incident, or were you just going based off of

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12:01:49 1 what Karl Schultz told you?

12:01:50 2 **A.** No. We were -- we were both walking
12:01:52 3 back. We would have both seen Mr. Kistner.

12:01:59 4 **Q.** Where -- where would you have seen
12:02:01 5 Mr. Kistner as you were walking back?

12:02:03 6 **MS. HUGGINS:** Form.

12:02:03 7 **THE WITNESS:** On the ground.

12:02:04 8 **BY MR. DAVENPORT:**

12:02:05 9 **Q.** So I guess my question is: With what
12:02:08 10 Karl Schultz said, that Mr. Kistner threw himself
12:02:10 11 at the police vehicle, did you happen to watch any
12:02:13 12 of that incident unfold before you exited the
12:02:16 13 police vehicle?

12:02:17 14 **A.** Well, like I said, I -- I remember
12:02:19 15 having a short conversation with Karl about what
12:02:26 16 we -- what we saw from the mirror, but that would
12:02:31 17 have been it.

12:02:32 18 **Q.** So now you're saying, what we saw from
12:02:35 19 the mirror. Were you also looking at the driver's
12:02:37 20 side mirror when the collision was made with
12:02:39 21 Mr. Kistner?

12:02:39 22 **A.** Well, yeah, that's what I said. I said
12:02:42 23 I was looking in the driver's side mirror and

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12:02:43 1 then --

12:02:43 2 Q. And --

12:02:45 3 MS. HUGGINS: Well, let --

12:02:45 4 THE WITNESS: -- and then also looking
12:02:46 5 forward.

12:02:47 6 BY MR. DAVENPORT:

12:02:48 7 Q. Okay. So now you're -- you're looking
12:02:49 8 forward and looking at the driver's side mirror.
12:02:51 9 Were you looking at the driver's side mirror as the
12:02:53 10 collision was made?

12:02:54 11 MS. HUGGINS: Form.

12:02:54 12 THE WITNESS: I don't -- I don't remember.
12:02:58 13 In order for me to have the conversation with Karl,
12:03:03 14 I would say I was looking in the mirror at the
12:03:05 15 time.

12:03:06 16 BY MR. DAVENPORT:

12:03:06 17 Q. And did you have any sort of an opinion
12:03:09 18 of what happened?

12:03:11 19 MS. HUGGINS: Form.

12:03:11 20 THE WITNESS: From -- from my perspective
12:03:17 21 looking into the mirror, it looked as though he
12:03:20 22 threw himself on her vehicle.

12:03:23 23 BY MR. DAVENPORT:

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12:03:24 1 **Q.** And what led you to believe that
12:03:27 2 Mr. Kistner threw himself on the police vehicle?
12:03:29 3 **A.** Again, I don't -- all I remember was
12:03:33 4 having the conversation with Karl about his
12:03:36 5 approach to the vehicle, and then from our -- from
12:03:40 6 our perspective, our vehicle was straight down the
12:03:44 7 street, and then we were looking in the mirror, and
12:03:47 8 then her vehicle was -- I don't know the word --
12:03:52 9 just --
12:03:52 10 **Q.** Diagonal?
12:03:53 11 **A.** Diagonal, yeah. So it looked like he
12:03:56 12 threw himself on the vehicle.
12:03:57 13 **Q.** So besides the fact that Mr. Kistner
12:03:59 14 was walking towards the vehicle and her vehicle was
12:04:01 15 diagonal, what other things did you see that led
12:04:04 16 yourself to believe that Mr. Kistner threw himself
12:04:08 17 at the vehicle, rather than the vehicle colliding
12:04:10 18 with Mr. Kistner?
12:04:11 19 **MS. HUGGINS:** Form.
12:04:11 20 **THE WITNESS:** Again, long time ago. I was
12:04:13 21 very, very new, and from our -- from my perspective,
12:04:17 22 because I can't speak on Karl's perspective, from
12:04:19 23 my perspective, that's all I was going off of.

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12:04:23 1 **BY MR. DAVENPORT:**

12:04:23 2 Q. Were you going off of what Karl told
12:04:26 3 you, or were you going off of what you saw?

12:04:27 4 A. No, no, no. From -- from what I saw.

12:04:30 5 Like I said, from my perspective, that's what it
12:04:32 6 looked like. But, I mean, even as I sit here right
12:04:35 7 now, I can't remember what it looked like. It

12:04:38 8 was --

12:04:38 9 Q. Do you remember if the police vehicle
12:04:39 10 that Lauren McDermott or Jenny Velez, that they
12:04:42 11 were in, was that vehicle stopped or was it moving
12:04:46 12 at the time of the collision?

12:04:47 13 **MS. HUGGINS:** Form.

12:04:47 14 **THE WITNESS:** From -- from my perspective as
12:04:51 15 I was looking in the mirror, it appeared as though
12:04:53 16 it was stopped.

12:04:55 17 **BY MR. DAVENPORT:**

12:04:55 18 Q. How long, approximately, was it stopped
12:04:58 19 before that collision was made?

12:05:00 20 **MS. HUGGINS:** Form.

12:05:00 21 **THE WITNESS:** I -- I -- I can't judge time
12:05:03 22 like that, but the whole -- the whole incident
12:05:06 23 looked pretty quick.

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12:05:08 1 BY MR. DAVENPORT:

12:05:09 2 Q. Now, what part of Mr. Kistner's body
12:05:11 3 initially contacted the police vehicle?

12:05:14 4 A. I -- I don't remember.

12:05:16 5 Q. Do you recall if Mr. Kistner stuck his
12:05:18 6 arm out at all?

12:05:19 7 A. I don't.

12:05:20 8 Q. Do you recall how he fell to the
12:05:25 9 ground?

12:05:26 10 A. I remember having a conversation with
12:05:29 11 Karl about him squatting down, leaning back, and
12:05:36 12 then putting his hand on the ground, and then
12:05:39 13 completing the fall.

12:05:40 14 Q. Now --

12:05:41 15 A. But I don't -- I don't remember seeing
12:05:42 16 that because it was so long ago and I was so
12:05:45 17 brand new.

12:05:46 18 Q. Now, was that something that you saw
12:05:48 19 independently, or was that just something that Karl
12:05:50 20 said?

12:05:51 21 Because you're saying that we had it --

12:05:53 22 A. That was -- yeah. That -- well, that
12:05:54 23 was something that I saw and then had the

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12:05:57 1 conversation with Karl about. But, again, as I sit
12:06:02 2 here right now, I don't remember.

12:06:03 3 I mean, it -- it was -- like I said, it was
12:06:04 4 so long ago and I was so brand new.

12:06:06 5 **Q.** Okay. At the time of the incident, is
12:06:09 6 that what you believed was that Mr. Kistner stuck
12:06:12 7 his arm out and then fell to the ground, as the
12:06:15 8 police vehicle was stopped?

12:06:15 9 **A.** At the time of the incident, yes, that
12:06:17 10 is -- that is what I believe.

12:06:19 11 **Q.** Okay. Now, as Mr. Kistner's falling to
12:06:25 12 the ground, is your police vehicle stopped or is it
12:06:27 13 moving at that time?

12:06:28 14 **A.** I -- I don't remember.

12:06:30 15 **Q.** When approximately did you stop your
12:06:33 16 police vehicle?

12:06:35 17 **A.** I -- I don't remember when I stopped
12:06:38 18 it, if it was before the incident or after or
12:06:42 19 during.

12:06:42 20 **Q.** Did Karl ask you to stop the police
12:06:44 21 vehicle?

12:06:47 22 **A.** I don't remember if he asked me or not.
12:06:50 23 All I know is I did.

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12:06:51 1 **Q.** Did you back up the police vehicle
12:06:53 2 after?

12:06:54 3 **A.** Yes.

12:06:54 4 **Q.** Okay. Approximately how far did you
12:06:57 5 back up the police vehicle?

12:06:58 6 **A.** I can't judge distance like that.
12:07:00 7 I don't -- I don't -- I don't know. I don't even
12:07:02 8 know where I stopped it.

12:07:03 9 **Q.** Okay. Now, why did you back up the
12:07:07 10 police vehicle at that time?

12:07:08 11 **A.** I probably didn't want to walk very
12:07:11 12 far.

12:07:11 13 **Q.** Okay.

12:07:14 14 **A.** Or it was quicker.

12:07:16 15 Could have been either of those.

12:07:17 16 **Q.** Before you and Karl got out of the car,
12:07:19 17 were Jenny Velez or Lauren McDermott out of the
12:07:23 18 police vehicle?

12:07:23 19 **A.** Before -- before me and Karl got out of
12:07:25 20 the car?

12:07:26 21 **Q.** Before you and Karl got out of the car.

12:07:27 22 **A.** I -- I don't know.

12:07:28 23 **Q.** Okay.

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12:07:29 1 **A.** I couldn't -- I couldn't see who was --
12:07:32 2 who was doing what at that point in time. I was
12:07:35 3 focused on reversing.

12:07:36 4 **Q.** Now, as you were walking back towards
12:07:40 5 Mr. Kistner, were you and Karl having any sort of
12:07:42 6 a conversation?

12:07:43 7 **A.** I don't remember if we were or not.

12:07:45 8 **Q.** Okay. As you were walking back towards
12:07:49 9 the police vehicle, what did you notice about
12:07:52 10 Mr. Kistner?

12:07:54 11 **A.** As we were walking back towards Lauren
12:07:56 12 and --

12:07:57 13 **Q.** Yes. Back towards the second police
12:07:59 14 vehicle.

12:08:02 15 **A.** I just remember him being on the
12:08:03 16 ground.

12:08:05 17 **Q.** Was he saying anything at that time?

12:08:08 18 **A.** Don't remember.

12:08:09 19 **Q.** Do you remember any other individuals
12:08:11 20 besides Jim Kistner being out anywhere in that
12:08:16 21 police scene?

12:08:16 22 **MS. HUGGINS:** Form.

12:08:17 23 **THE WITNESS:** I don't know for sure if it

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12:09:18 1 **Q.** Okay. And so how long approximately
12:09:21 2 was it, after you first saw Mr. Kistner, that you
12:09:24 3 then made it out into the street?

12:09:29 4 **A.** From when we were trying to leave, to
12:09:32 5 when I saw him come into the street? Is that what
12:09:35 6 you're saying?

12:09:36 7 **Q.** Well, I guess what you were telling me
12:09:38 8 is that you saw that Mr. Kistner walked out of the
12:09:40 9 same house that the second person came out of.

12:09:42 10 So I guess what my question is: After you
12:09:46 11 first saw Mr. Kistner come out of that house, how
12:09:48 12 long was it before he entered the street?

12:09:49 13 **MS. HUGGINS:** Form. You can answer.

12:09:50 14 **THE WITNESS:** I don't -- I don't -- I don't
12:09:57 15 know if I'd be able to judge that time. I'm -- I'm
12:10:01 16 thinking it was quick.

12:10:02 17 **BY MR. DAVENPORT:**

12:10:02 18 **Q.** Was it minutes or was it seconds?

12:10:05 19 **A.** Not many minutes.

12:10:07 20 **Q.** But you're thinking it would have been
12:10:10 21 minutes?

12:10:10 22 **A.** Like maybe one or maybe seconds.

12:10:14 23 **Q.** Okay.

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12:10:16 1 **A.** Yeah, I don't know.

12:10:17 2 **Q.** Do you know why you and Karl Schultz
12:10:20 3 would have been sitting in your police vehicle for
12:10:22 4 a few minutes after you first entered your police
12:10:25 5 vehicle?

12:10:26 6 **MS. HUGGINS:** Form.

12:10:26 7 **THE WITNESS:** I -- I don't remember.

12:10:29 8 He could have been giving me an on-the-spot
12:10:33 9 evaluation. We could have just been talking about
12:10:38 10 nothing. We could have been just sitting there.

12:10:42 11 And like I said, I don't remember what --
12:10:45 12 what all we did on the larceny at 33 Schmarbeck, so
12:10:50 13 we could have just been talking about that right
12:10:53 14 before we were leaving.

12:10:54 15 **BY MR. DAVENPORT:**

12:10:54 16 **Q.** Would that be something that he would
12:10:56 17 normally do is give you an on-the-spot evaluation?

12:10:58 18 **A.** Sometimes.

12:10:59 19 **Q.** Was that often or --

12:11:02 20 **A.** Over 16 weeks, yeah, I mean, sometimes
12:11:05 21 he would just be like: You did a good job, or,
12:11:08 22 hey, do this, do this better.

12:11:09 23 **Q.** What kinds of things would he ask you

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12:11:12 1 to -- you know, what kind -- sorry. Strike that.
12:11:15 2 What kinds of procedures would he point out
12:11:17 3 that you didn't possibly do correctly during your
12:11:20 4 training?

12:11:20 5 **MS. HUGGINS:** Form.

12:11:21 6 **THE WITNESS:** Well, like I said, basic
12:11:25 7 information, if you -- if you get their name, date
12:11:28 8 of birth, and phone number, maybe you forget
12:11:30 9 a phone number to write down or something or, you
12:11:34 10 know, something -- something small like that, he
12:11:37 11 would be like: Hey, go back out there and do this.
12:11:39 12 Or, hey, make sure you do this better next time.

12:11:44 13 **BY MR. DAVENPORT:**

12:11:44 14 **Q.** Now, would you have -- I'm sorry.
12:11:50 15 Strike that.

12:11:51 16 For -- when you were walking back towards
12:11:54 17 Mr. Kistner towards the police vehicle, you said
12:11:56 18 that you saw him on the ground, correct?

12:11:59 19 **A.** Yeah.

12:12:00 20 **Q.** Was he sitting up, or was he laying
12:12:02 21 down?

12:12:10 22 **A.** I think he was laying down, but
12:12:12 23 I can't -- I can't be too sure.

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12:12:15 1 **Q.** Okay.

12:12:16 2 **A.** Very long time ago.

12:12:17 3 **Q.** No. Sure. Sure.

12:12:20 4 Was he holding any part of his body at that

12:12:24 5 time?

12:12:24 6 **A.** I don't remember.

12:12:24 7 **Q.** Okay. Was he complaining about his

12:12:27 8 head hurting him?

12:12:27 9 **A.** I don't remember.

12:12:31 10 **Q.** Who was the first person that made it

12:12:34 11 to Mr. Kistner? Who first spoke to him?

12:12:36 12 **MS. HUGGINS:** Form.

12:12:38 13 **THE WITNESS:** I -- at this point in time, it

12:12:40 14 was not me, so I don't know who spoke to him first.

12:12:45 15 **BY MR. DAVENPORT:**

12:12:45 16 **Q.** Okay. Once somebody did speak to

12:12:52 17 Mr. Kistner, do you remember what was said to him?

12:12:54 18 **A.** No.

12:12:54 19 **Q.** What kinds of things would have been

12:12:56 20 said to him?

12:12:56 21 **MS. HUGGINS:** Form.

12:12:57 22 **THE WITNESS:** I'm -- I'm unsure of what type

12:13:00 23 of things could have or would have been said to

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12:13:05 1 him. Very new in a very chaotic situation.

12:13:09 2 I didn't do much but attempt to observe as much
12:13:13 3 as I could.

12:13:14 4 **BY MR. DAVENPORT:**

12:13:14 5 **Q.** And what were you trying to observe?

12:13:17 6 **A.** What other officers were -- were doing,
12:13:21 7 what Mr. Kistner was doing.

12:13:22 8 **Q.** Now, I understand that you were new at
12:13:24 9 the time --

12:13:24 10 **A.** Yeah.

12:13:24 11 **Q.** -- but based on the experience that
12:13:27 12 you've been able to gain, what should have been
12:13:29 13 done if there was an individual -- whether he threw
12:13:31 14 himself at the police vehicle or whether the police
12:13:33 15 vehicle struck him, if he was on the ground, what
12:13:36 16 should have been done next?

12:13:37 17 **MS. HUGGINS:** Form.

12:13:37 18 **THE WITNESS:** Well, I mean, it's not so much
12:13:40 19 as what should have been done, it's what we did.
12:13:42 20 And what we did was observe what had just taken
12:13:46 21 place in front of us, and then other senior
12:13:51 22 officers assessed what to do.

12:13:53 23 **BY MR. DAVENPORT:**

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13:24:45 1 **MR. DAVENPORT:** Sure. So the disc that
13:24:46 2 I just played was Exhibit 12. It is Exhibit A
13:24:51 3 supplement that was provided by the plaintiffs.

13:24:56 4 We are now playing Exhibit 11, which was
13:24:58 5 also provided by the plaintiffs.

13:24:58 6 (Video clip played.)

13:24:58 7 **BY MR. DAVENPORT:**

13:25:20 8 **Q.** So now I am playing again what has been
13:25:23 9 marked as Exhibit 11, for purposes of the
13:25:26 10 deposition. The last four digits are 2529.

13:25:31 11 Now, what I want you to pay attention to is
13:25:34 12 when the first instance that you would consider
13:25:37 13 contact has been made between Mr. Kistner and
13:25:41 14 Ms. Velez and Ms. McDermott's vehicle.

13:25:45 15 **A.** Okay.

13:25:51 16 **MS. HUGGINS:** Wait for a question.

13:25:52 17 **BY MR. DAVENPORT:**

13:25:52 18 **Q.** What time is that?

13:25:54 19 What time -- what's the time stamp in the
13:25:55 20 top part of the video?

13:25:58 21 **MS. HUGGINS:** Form.

13:25:58 22 **THE WITNESS:** 10:25:36.

13:26:02 23 **BY MR. DAVENPORT:**

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13:26:02 1 **Q.** Okay. Would you agree with me that
13:26:04 2 your vehicle is still in view at that point at
13:26:09 3 10:25:36?

13:26:10 4 **A.** Yeah. Yes.

13:26:11 5 **Q.** Okay. Now, would you agree with me
13:26:13 6 that based on the other camera angle, you did not
13:26:17 7 appear back within view until 10:25:44?

13:26:22 8 **MS. HUGGINS:** Form.

13:26:22 9 **THE WITNESS:** Yeah, that's correct.

13:26:24 10 **BY MR. DAVENPORT:**

13:26:24 11 **Q.** And that would have been eight seconds
13:26:26 12 after initial contact was made between Mr. Kistner
13:26:28 13 and that vehicle, correct?

13:26:29 14 **MS. HUGGINS:** Form. I'd object to -- we've
13:26:34 15 already indicated that we're not -- the accuracy of
13:26:37 16 these time stamps has not been verified in any way.

13:26:42 17 **BY MR. DAVENPORT:**

13:26:42 18 **Q.** You can answer the question.

13:26:43 19 **A.** Can you -- can you repeat the question
13:26:46 20 again?

13:26:46 21 **MR. DAVENPORT:** Sure.

13:26:47 22 Can you read back the question that I just
13:26:49 23 asked?

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13:26:49 1 (The above-requested portion was then read
13:27:10 2 by the reporter.)

13:27:10 3 **MS. HUGGINS:** Same -- same form objection.

13:27:13 4 **THE WITNESS:** Yeah. Yes, as per that time
13:27:17 5 on the camera.

13:27:19 6 **BY MR. DAVENPORT:**

13:27:19 7 **Q.** Okay. So now assuming that you were
13:27:21 8 moving forward for six of those seconds, you
13:27:26 9 weren't stopped at the point that contact was made
13:27:28 10 between Mr. Kistner and the police vehicle,
13:27:30 11 correct?

13:27:30 12 **MS. HUGGINS:** Form.

13:27:32 13 **THE WITNESS:** No.

13:27:33 14 **BY MR. DAVENPORT:**

13:27:34 15 **Q.** Okay. Would you have been looking into
13:27:37 16 your driver's side mirror at this point?

13:27:41 17 **A.** Like I said earlier, I -- I could have
13:27:43 18 been looking at the mirror or forward, but I do
13:27:49 19 remember at some point looking at the driver's side
13:27:52 20 mirror and seeing what I thought I saw.

13:27:56 21 **Q.** So now assuming that you saw
13:27:59 22 Mr. Kistner make contact with the vehicle, you're
13:28:01 23 still driving forward for a few seconds, correct?

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13:28:04 1 **MS. HUGGINS:** Form.

13:28:04 2 **THE WITNESS:** Correct.

13:28:06 3 **BY MR. DAVENPORT:**

13:28:06 4 **Q.** So why didn't you stop after contact
13:28:08 5 was made between Mr. Kistner and the police
13:28:10 6 vehicle?

13:28:10 7 **MS. HUGGINS:** Form.

13:28:10 8 **THE WITNESS:** Well, because you have to come
13:28:12 9 to a safe stop. You can't just slam on the brakes
13:28:15 10 and slam your head into the steering wheel. You
13:28:18 11 know what I mean? You still have to stop.

13:28:21 12 **BY MR. DAVENPORT:**

13:28:21 13 **Q.** Okay. And it would have taken you,
13:28:24 14 let's assume, eight seconds to come back?

13:28:26 15 **MS. HUGGINS:** Form.

13:28:27 16 **BY MR. DAVENPORT:**

13:28:28 17 **Q.** To stop your car and come back, that
13:28:30 18 would be a safe stop?

13:28:31 19 **MS. HUGGINS:** Form.

13:28:32 20 **THE WITNESS:** Yeah.

13:28:32 21 **BY MR. DAVENPORT:**

13:28:32 22 **Q.** Okay. Now, let's assume that your
13:28:35 23 vehicle is moving away from the incident as it's

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13:28:37 1 happening. What -- do you think that what you
13:28:43 2 would be able to see would be distorted if you're
13:28:47 3 moving away from a scene rather than closer to
13:28:49 4 a scene?

13:28:50 5 **MS. HUGGINS:** Form.

13:28:50 6 **THE WITNESS:** You know, your eyes see what
13:28:54 7 they see, so I don't -- I can't speak on what can
13:28:58 8 be distorted and all that.

13:29:03 9 **BY MR. DAVENPORT:**

13:29:03 10 **Q.** But you saw Mr. Kistner make contact
13:29:06 11 with the vehicle?

13:29:07 12 **MS. HUGGINS:** Form. Asked and answered.

13:29:09 13 **THE WITNESS:** Yeah.

13:29:10 14 **BY MR. DAVENPORT:**

13:29:10 15 **Q.** And then you kept on driving forward?

13:29:12 16 **MS. HUGGINS:** Form.

13:29:12 17 **THE WITNESS:** I was slowing down to a stop
13:29:14 18 and then reversing, yeah.

13:29:15 19 **BY MR. DAVENPORT:**

13:29:15 20 **Q.** Was Karl Schultz telling you to stop at
13:29:18 21 that point?

13:29:18 22 **A.** Like I said, I don't -- I don't
13:29:21 23 remember if he told me to stop. I think I -- I

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13:29:24 1 think I just kind of stopped.

13:29:26 2 Q. Okay. Are you talking at all with Karl
13:29:31 3 Schultz as contact is initially made between the
13:29:33 4 police vehicle and Mr. Kistner?

13:29:34 5 MS. HUGGINS: Form.

13:29:35 6 THE WITNESS: As I already stated, I think --
13:29:40 7 I think we both -- I think either I said something,
13:29:44 8 he said something, or maybe we both said something
13:29:47 9 about what we thought we just saw.

13:29:50 10 BY MR. DAVENPORT:

13:29:50 11 Q. Okay. Now, I want you to watch again
13:30:02 12 the collision that is made between Mr. Kistner and
13:30:04 13 between the police vehicle, and I want you to tell
13:30:08 14 me if you still think that Mr. Kistner was the one
13:30:12 15 that threw himself at the police vehicle.

13:30:14 16 MS. HUGGINS: Form.

13:30:21 17 (Video clip played.)

13:30:21 18 BY MR. DAVENPORT:

13:30:21 19 Q. Does it look like Mr. Kistner threw
13:30:23 20 himself at that police vehicle?

13:30:24 21 MS. HUGGINS: Form.

13:30:24 22 THE WITNESS: Again, we're looking at
13:30:27 23 a camera at a different angle. What I saw from my

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13:30:31 1 perspective, it looked like he threw himself at the
13:30:36 2 vehicle.

13:30:37 3 **BY MR. DAVENPORT:**

13:30:37 4 **Q.** But, again --

13:30:38 5 **A.** So --

13:30:39 6 **Q.** -- your perspective was you looking in
13:30:41 7 your driver's side mirror, as you were driving
13:30:43 8 forward.

13:30:43 9 **A.** Correct.

13:30:43 10 **Q.** And you were driving forward for eight
13:30:45 11 seconds after initial contact was made.

13:30:49 12 **A.** That is correct.

13:30:50 13 **MS. HUGGINS:** Form.

13:30:50 14 **BY MR. DAVENPORT:**

13:30:50 15 **Q.** Okay. Now, after contact was made, did
13:30:52 16 you notice that police vehicle moving forward at
13:30:56 17 all?

13:30:56 18 I can replay it if you need me to.

13:30:59 19 **A.** I -- I just need you to say that
13:31:01 20 question again. What do you mean?

13:31:03 21 **Q.** Okay.

13:31:04 22 **MS. HUGGINS:** Can you read it back, Anne?

13:31:04 23 (The above-requested portion was then read

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13:31:24 1 by the reporter.)

13:31:24 2 **THE WITNESS:** By this video, at this angle,
13:31:28 3 that's what it looks like.

13:31:30 4 **BY MR. DAVENPORT:**

13:31:30 5 **Q.** Okay.

13:31:30 6 **A.** But from what I saw when -- again, when
13:31:33 7 I was looking in my mirror, that's not what I saw.

13:31:35 8 **Q.** Okay. Did anybody talk with -- did
13:31:41 9 either you or Karl Schultz talk with Lauren
13:31:44 10 McDermott and Jenny Velez to see what they saw?

13:31:45 11 **A.** I -- I would have never have done that.
13:31:48 12 Again, because I was so brand new, I deferred
13:31:51 13 everything to -- to the other officers.

13:31:54 14 **MR. DAVENPORT:** Okay. Now, I want you to
13:32:16 15 watch.

13:32:16 16 (Video clip played.)

13:32:16 17 **BY MR. DAVENPORT:**

13:32:18 18 **Q.** Who is that individual that just came
13:32:21 19 into the scene right here?

13:32:23 20 **A.** At the time, I -- I didn't know, and,
13:32:32 21 again, I -- I don't think we ever took down info.
13:32:38 22 I'm pretty sure it -- it was his son -- it's his
13:32:40 23 son.

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13:32:43 1 **Q.** Okay. Would it be normal for somebody
13:32:45 2 to run out after their father after they've been
13:32:48 3 hit by a police vehicle?

13:32:48 4 **MS. HUGGINS:** Form.

13:32:50 5 **THE WITNESS:** You can't -- you can't just
13:32:53 6 determine that from -- from not knowing who he is
13:32:55 7 or anything like that. You know what I mean?
13:32:57 8 I don't -- I don't -- I don't know who he is.

13:32:58 9 **BY MR. DAVENPORT:**

13:32:58 10 **Q.** But after you came to -- because you
13:33:00 11 did say that you came to learn that --

13:33:00 12 **A.** Yeah. Yeah.

13:33:02 13 **Q.** -- he may have been his son or --

13:33:03 14 **A.** So --

13:33:04 15 **Q.** -- related to him, that it would have
13:33:07 16 been normal for him to run out after his father
13:33:09 17 after he's been hit?

13:33:11 18 **MS. HUGGINS:** Form. Asked and answered, and
13:33:11 19 misstates the testimony.

13:33:12 20 **THE WITNESS:** It's normal for some people.

13:33:14 21 It's normal -- not normal for other people.

13:33:14 22 I mean --

13:33:15 23 **BY MR. DAVENPORT:**

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13:33:15 1 **Q.** Would you run out after your father, if
13:33:17 2 he was hit by a police vehicle?

13:33:18 3 **A.** Again, it's normal for some people.
13:33:20 4 It's normal -- not normal for --

13:33:22 5 **Q.** I'm asking you for what you would
13:33:25 6 specifically do.

13:33:25 7 **A.** I'm -- I'm going -- I'm going to answer.

13:33:25 8 **MS. HUGGINS:** Form.

13:33:27 9 **THE WITNESS:** Just let me answer.

13:33:27 10 **BY MR. DAVENPORT:**

13:33:28 11 **Q.** Okay.

13:33:28 12 **A.** It's normal for some people. It's not
13:33:30 13 normal for other people. I would. There's other
13:33:31 14 people that I've seen that don't really care. So
13:33:34 15 it is normal but it's also not normal.

13:33:36 16 **Q.** Okay. Now, at this point he runs out
13:33:40 17 and he stops really quickly. At this point would
13:33:44 18 you say that he's made any threatening motions or
13:33:46 19 anything that would make you concerned for your
13:33:48 20 safety?

13:33:49 21 **MS. HUGGINS:** Form.

13:33:50 22 **THE WITNESS:** No.

13:33:51 23 **BY MR. DAVENPORT:**

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Moriarity - Davenport - 2/21/20

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15:02:11 1 driver's side mirror, I would say yes.

15:02:13 2 **BY MR. DAVENPORT:**

15:02:13 3 **Q.** That the subject did intend to damage
15:02:15 4 the vehicle?

15:02:15 5 **A.** From my driver's side mirror, yeah.

15:02:17 6 **Q.** Okay. What about the view that you saw
15:02:19 7 on the TV screen?

15:02:21 8 **A.** I -- I mean, I'm -- I'm not -- I -- I'm
15:02:23 9 not going to say that because I didn't -- that's
15:02:25 10 not the viewpoint that I had. I mean, I'm looking
15:02:31 11 through my -- my driver's side mirror. That's what
15:02:34 12 I'm looking through.

15:02:35 13 **Q.** Sure, but I guess just what I'm asking
15:02:37 14 is: After watching that video, do you think that
15:02:39 15 the subject intended to damage the vehicle?

15:02:41 16 **MS. HUGGINS:** Form.

15:02:42 17 **THE WITNESS:** The way that he walked up to
15:02:44 18 a moving vehicle, and then it looks like the
15:02:47 19 vehicle was stopping or stopped, and then all of
15:02:51 20 a sudden he falls down, yeah, I would say -- I
15:02:53 21 would say, yeah, it does look like he intended
15:02:56 22 to -- to throw himself into the vehicle, so --

15:02:59 23 **BY MR. DAVENPORT:**

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15:02:59 1 **Q.** But we talked about before, when we
15:03:01 2 were watching the -- when we were watching the
15:03:03 3 video, the car seemed to still be moving after
15:03:06 4 contact was made, correct?

15:03:07 5 **MS. HUGGINS:** Form.

15:03:07 6 **THE WITNESS:** From -- from wherever this
15:03:09 7 viewpoint was, I mean, it -- it can look like all
15:03:12 8 types of stuff, but what -- what did -- what did
15:03:14 9 the officers on the ground view?

15:03:17 10 You know, Lauren is the best person to ask
15:03:19 11 this question to. I didn't -- I wasn't right here,
15:03:23 12 you know, I --

15:03:23 13 **BY MR. DAVENPORT:**

15:03:23 14 **Q.** Right. No. I -- I understand.

15:03:24 15 **A.** I'm way up the street, you know?

15:03:26 16 **Q.** And, you know, she signed this under
15:03:28 17 the penalties of perjury --

15:03:28 18 **A.** Yeah.

15:03:30 19 **Q.** -- so it's -- you know, this is more so
15:03:31 20 what she said, but I'm just merely asking if you
15:03:33 21 agree with what was written.

15:03:34 22 **A.** I -- I do agree with what --

15:03:36 23 **MS. HUGGINS:** Form.

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15:03:37 1 **THE WITNESS:** -- was -- what was written.

15:03:37 2 **BY MR. DAVENPORT:**

15:03:37 3 **Q.** So after what you saw on the video, he
15:03:39 4 intended to damage the vehicle?

15:03:40 5 **MS. HUGGINS:** Form. Asked and answered.

15:03:41 6 **THE WITNESS:** Yeah.

15:03:42 7 **BY MR. DAVENPORT:**

15:03:42 8 **Q.** Okay. So going towards the next line:

15:03:45 9 The property of another person, City of Buffalo
15:03:48 10 Police Department, and having no right to do so,
15:03:51 11 nor any reasonable ground to believe that he had
15:03:54 12 such right, did damage the property, to wit,
15:03:58 13 driver's side mirror and driver's side mirror of
15:04:01 14 patrol vehicle, in the amount of more than \$250.

15:04:04 15 Now, my question is: At any point during
15:04:07 16 that day, was there ever a second opinion that was
15:04:11 17 received, besides the officers on scene, for what
15:04:13 18 the damage to the police vehicle was at that time?

15:04:16 19 **A.** I would have absolutely no idea if --
15:04:19 20 if anyone else looked at -- looked at it.

15:04:23 21 I wouldn't even know who to -- who to ask
15:04:26 22 that to.

15:04:27 23 **Q.** Okay.

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15:04:27 1 **A.** Maybe the -- I know -- I mean, did they
15:04:29 2 take it to the Seneca garage? I don't know
15:04:32 3 these -- I don't know those answers.

15:04:33 4 **Q.** Okay.

15:04:33 5 **A.** I don't know what they did with -- with
15:04:36 6 anything.

15:04:37 7 **Q.** So I'm going to show you what's been
15:04:39 8 marked as Exhibit 18.

15:04:42 9 **A.** What is this?

15:04:45 10 **Q.** Can you read the date that's right
15:04:48 11 underneath service information?

15:04:53 12 **A.** Oh, the one that's circled? 1/5/2017.

15:04:57 13 **Q.** Okay. So, now, it's been represented
15:04:58 14 to us by your counsel that this is the first
15:05:02 15 maintenance work order after that incident, so --

15:05:06 16 **A.** Okay.

15:05:06 17 **MS. HUGGINS:** Form.

15:05:08 18 **BY MR. DAVENPORT:**

15:05:10 19 **Q.** Do you see anything that's on there
15:05:12 20 where it refers to fixing or repairing a driver's
15:05:19 21 side window or driver's side mirror?

15:05:21 22 **A.** No.

15:05:21 23 **Q.** Okay. Was does it refer to?

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15:05:24 1 **A.** It says service cooling system. And
15:05:26 2 then remarks -- I don't know what RR means, but
15:05:29 3 water pump and then serp belt. Maybe serpentine
15:05:36 4 belt.

15:05:36 5 **Q.** Okay. And would you agree that there's
15:05:38 6 no estimate as to what the cost will be for
15:05:42 7 repairing the vehicle?

15:05:43 8 **MS. HUGGINS:** Form.

15:05:44 9 **THE WITNESS:** Yeah. It's blank.

15:05:45 10 **BY MR. DAVENPORT:**

15:05:45 11 **Q.** Okay. And you would also agree with me
15:05:48 12 that it in no way refers to the driver's side
15:05:51 13 mirror or the driver's side window.

15:05:52 14 **A.** Correct.

15:05:53 15 **Q.** Okay. So now turning back to Exhibit 17,
15:06:00 16 would you agree that it was speculation that the
15:06:03 17 amount of the damage was more than \$250?

15:06:06 18 **MS. HUGGINS:** Form.

15:06:06 19 **THE WITNESS:** That would be speculation,
15:06:11 20 I've got to defer to Lauren. I don't -- she --
15:06:14 21 again, you know, she signed off on the charges, so
15:06:16 22 I -- I don't know.

15:06:17 23 **BY MR. DAVENPORT:**

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15:06:17 1 **Q.** Okay.

15:06:18 2 **A.** I'm not a mechanic either. I don't
15:06:20 3 know how much a mirror costs.

15:06:21 4 **Q.** Sure.

15:06:21 5 All right. So next sentence: In that the
15:06:24 6 defendant did intentionally throw his body into the
15:06:27 7 driver's side mirror of patrol vehicle number 473,
15:06:31 8 causing the mirror to become dislodged from the
15:06:34 9 vehicle.

15:06:34 10 Now, on that day, did you observe the
15:06:36 11 driver's side mirror becoming dislodged from the
15:06:39 12 vehicle?

15:06:40 13 **MS. HUGGINS:** Form.

15:06:40 14 **THE WITNESS:** I don't even think I looked at
15:06:43 15 the truck.

15:06:43 16 **BY MR. DAVENPORT:**

15:06:43 17 **Q.** Okay. And also causing the driver's
15:06:47 18 side window to malfunction. The value of said
15:06:49 19 damage to exceed \$250.

15:06:53 20 Now, did anybody at any point talk about the
15:06:58 21 driver's side mirror or the driver's side window
15:07:01 22 being either dislodged or malfunctioning on the
15:07:03 23 day?

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15:07:05 1 **A.** It --
15:07:05 2 **MS. HUGGINS:** Form.
15:07:06 3 **THE WITNESS:** If -- if they -- they did,
15:07:09 4 they didn't say it to me, because why would you
15:07:11 5 talk to me? I'm brand new. If they said it in
15:07:15 6 front of me, then I don't -- I don't remember,
15:07:17 7 because I probably wasn't either -- I don't know.
15:07:20 8 I wasn't paying attention or I just didn't
15:07:22 9 remember.

15:07:27 10 **BY MR. DAVENPORT:**

15:07:28 11 **Q.** All right. So we'll turn to the next
15:07:30 12 criminal complaint, which is for disorderly
15:07:33 13 conduct.

15:07:33 14 So now it says, the said defendant, at the
15:07:37 15 aforesaid time and place, with intent to cause
15:07:40 16 public inconvenience, annoyance, or alarm, or
15:07:43 17 recklessly creating a risk thereof, while in
15:07:46 18 a public place, did use abusive or obscene language
15:07:51 19 or made an obscene gesture.

15:07:54 20 Now, at any time that you were with
15:07:57 21 Mr. Kistner, did he ever make an obscene gesture to
15:08:00 22 any of the officers?

15:08:01 23 **A.** I mean, even -- even on the video, it

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15:08:05 1 just shows us taking off. I -- I didn't have any
15:08:11 2 confrontation with him, with the exception of
15:08:13 3 walking him back to patrol vehicle 532 and placing
15:08:18 4 him in the back, and then -- and then that was it.

15:08:22 5 Q. Now, when you say a confrontation, what
15:08:24 6 are you referring to?

15:08:24 7 A. Just -- just me in contact with him,
15:08:28 8 bringing him back to the patrol vehicle. That --
15:08:32 9 that was it. That's the confrontation.

15:08:34 10 Q. Okay. Did he ever make any sort of
15:08:36 11 rude remarks or use any obscene language directed
15:08:40 12 towards you or Mr. Schultz?

15:08:42 13 A. Not to me. Not from what I remember.

15:08:45 14 Q. Okay. What about to Mr. Schultz?

15:08:49 15 A. Not to -- not to what I remember.

15:08:50 16 Q. Okay. Now, in that the defendant did
15:08:56 17 intentionally throw his body into the driver's side
15:08:59 18 mirror of patrol vehicle number 473, causing the
15:09:02 19 mirror to become dislodged from the vehicle and
15:09:04 20 also causing the driver's side window to
15:09:06 21 malfunction, the value of said damage to exceed
15:09:10 22 \$250.

15:09:11 23 Now, do you know if for disorderly conduct,

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15:09:14 1 is there some sort of a threshold amount of damage
15:09:17 2 that's recovered -- required in order to charge
15:09:19 3 somebody with that penal law statute?

15:09:21 4 **MS. HUGGINS:** Form.

15:09:21 5 **THE WITNESS:** No, there's not.

15:09:23 6 **BY MR. DAVENPORT:**

15:09:23 7 **Q.** Okay. And while being treated at ECMC,
15:09:27 8 the defendant did use obscene and offensive
15:09:30 9 language toward officers and medical staff.

15:09:33 10 Do you remember the individual, Mr. Kistner,
15:09:38 11 ever using obscene language towards the medical
15:09:40 12 staff there?

15:09:41 13 **A.** I wasn't in the room with him.

15:09:43 14 **Q.** Okay. Now, have you ever used
15:09:53 15 a strip search or a body cavity search before,
15:09:57 16 after somebody's been taken to cell block or
15:10:01 17 booking?

15:10:01 18 **A.** No.

15:10:01 19 **Q.** Never before?

15:10:02 20 **A.** No. Cell block does their formal
15:10:05 21 searches, but no.

15:10:06 22 **Q.** Have you ever directed a cell block
15:10:08 23 attendant to use a body cavity or a strip search?

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15:11:38 1 **A.** No.

15:11:39 2 **MR. DAVENPORT:** Okay. All right. I think

15:11:41 3 I'm all set.

15:11:42 4 Do you have any questions?

15:11:43 5 **MS. HUGGINS:** I have no questions.

15:11:44 6 **MR. DAVENPORT:** All right. Thank you.

7 (Proceedings of 2/21/20 were then concluded
8 at 3:11 p.m.)

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1 I hereby CERTIFY that I have read the
2 foregoing 293 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on February 21, 2020.

7

8

9

10 KYLE T. MORIARITY

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

19

ANNE T. BARONE, RPR,
Notary Public.

20

21

22

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EXHIBIT I

VIDEO DEPOSITION
JENNY VELEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

1 Video deposition of **JENNY VELEZ**,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 26, 2020, commencing at
6 10:11 a.m., before LYNNE E. DiMARCO, Notary Public.

7

8 APPEARANCES: RUPP BAASE
9 PFALZGRAF & CUNNINGHAM, LLC,
10 By CHAD DAVENPORT, ESQ.,
11 1600 Liberty Building,
12 Buffalo, New York 14202,
13 (716) 854-3400,
14 davenport@ruppbaase.com,
15 Appearing for the Plaintiff.

16 TIMOTHY A. BALL, ESQ.,
17 Corporation Counsel,
18 By MAEVE E. HUGGINS, ESQ.,
19 Assistant Corporation Counsel,
20 1137 City Hall,
21 Buffalo, New York 14202,
22 (716) 851-4334,
23 mhuggins@city-buffalo.com,
24 Appearing for the Defendants.

25 PRESENT: JAMES KISTNER
26 LAUREN McDERMOTT

27 PATRICK F. MORRIS, Videographer

10:02:14

10:11:41 22

10:11:47 23

MR. DAVENPORT: Chad Davenport here on

behalf of the plaintiff Jim Kistner.

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10:11:49 1 **MS. HUGGINS:** Maeve Huggins on behalf of the
10:11:49 2 defendants.

10:11:49 3

10:12:01 4 **J E N N Y V E L E Z**, 693 East Ferry Street,
10:12:05 5 Buffalo, New York 14211, after being duly called
10:12:07 6 and sworn, testified as follows:

10:12:07 7

10:12:07 8 **EXAMINATION BY MR. DAVENPORT:**

10:12:07 9

10:12:09 10 **Q.** Good morning, Ms. Velez.

10:12:12 11 **A.** Good morning.

10:12:13 12 **Q.** My name is Chad Davenport. I'm with
10:12:13 13 the law firm Rupp Baase Pfalzgraf Cunningham and we
10:12:15 14 represent the plaintiff Jim Kistner.

10:12:17 15 So we are here today to talk about events
10:12:19 16 that transpired on January 1st of 2017. Before we
10:12:24 17 start, have you ever given sworn testimony before?

10:12:26 18 **A.** Yes, I have.

10:12:27 19 **Q.** And was that in a civil matter or was
10:12:31 20 that in a criminal matter?

10:12:32 21 **A.** Criminal.

10:12:33 22 **Q.** Okay. Have you ever given sworn
10:12:35 23 testimony in front of -- in a civil matter before?

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11:16:46 1 **Q.** Okay.

11:16:46 2 **A.** -- every single.

11:16:48 3 **Q.** No, that's okay. Did you review any

11:16:51 4 videos?

11:16:52 5 **A.** Yes.

11:16:52 6 **Q.** Okay. What videos did you review?

11:16:55 7 **A.** I reviewed the video that was provided

11:16:59 8 regarding the incident.

11:17:00 9 **Q.** Okay. How many video segments were

11:17:00 10 there?

11:17:05 11 **A.** I don't recall.

11:17:05 12 **Q.** Okay. Would it have been four?

11:17:08 13 **A.** I don't recall.

11:17:08 14 **Q.** Okay. Did you watch each of the videos

11:17:12 15 that was on the disc that was provided to you?

11:17:14 16 **A.** Yes.

11:17:14 17 **Q.** Okay. In their entirety?

11:17:16 18 **A.** Yes.

11:17:17 19 **Q.** Okay. Was that the first time that you

11:17:21 20 saw those video segments?

11:17:24 21 **A.** No.

11:17:25 22 **Q.** Okay. When was the first time that you

11:17:27 23 saw those video segments?

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11:17:27 1 **A.** When I was served paperwork with
11:17:28 2 the -- regarding the lawsuit and the disc was
11:17:31 3 provided.

11:17:33 4 **Q.** After you were served, did you watch
11:17:36 5 those videos again?

11:17:37 6 **A.** Yes.

11:17:38 7 **Q.** Approximately how many times did you
11:17:40 8 watch those videos?

11:17:44 9 **A.** I viewed it the -- when I was served
11:17:48 10 and then that I can recall twice with Maeve.

11:17:56 11 **Q.** Sure. And I'm not going to ask what
11:17:59 12 kinds of discussions that you had with your
11:18:01 13 attorney, that's between you and her, but thank
11:18:03 14 you.

11:18:06 15 So prior to your deposition today, when was
11:18:08 16 the last time that you watched the video?

11:18:11 17 **A.** Last week, I believe.

11:18:12 18 **Q.** Okay. And no other times in between
11:18:15 19 the last time that you watched it and your
11:18:18 20 deposition today, no segments or anything?

11:18:21 21 **A.** No.

11:18:21 22 **Q.** Okay. So I'm going to --

11:18:21 23 **MS. HUGGINS:** Other than obviously she was

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11:18:24 1 in attendance with -- for Officer McDermott's.

11:18:24 2 **THE WITNESS:** Right.

11:18:25 3 **MS. HUGGINS:** Detective McDermott's.

11:18:25 4 **MR. DAVENPORT:** Sure.

11:18:26 5 **MS. HUGGINS:** And they were shown during the
11:18:28 6 course of that deposition.

11:18:29 7 **BY MR. DAVENPORT:**

11:18:29 8 **Q.** Sure. So I'm going to show you what's
11:18:32 9 been marked as Exhibit 6. Do you recognize this
11:18:37 10 document?

11:18:37 11 **A.** Yes.

11:18:37 12 **Q.** And what do you recognize it to be?

11:18:40 13 **A.** A 941.

11:18:45 14 **Q.** Okay. Is the date on here January 1st
11:18:49 15 of 2017?

11:18:49 16 **A.** Yes.

11:18:49 17 **Q.** And is the time 4:37 for the time of
11:18:53 18 transport?

11:18:54 19 **A.** Yes.

11:18:55 20 **Q.** Okay. Now, the time of transport, what
11:19:00 21 would that represent?

11:19:07 22 **A.** I believe this was the time that he was
11:19:09 23 brought to ECMC.

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11:19:13 1 **Q.** Okay.

11:19:14 2 **A.** To the best of my recollection.

11:19:16 3 **Q.** Do you know where he was brought to

11:19:18 4 ECMC from?

11:19:18 5 **A.** Central booking.

11:19:20 6 **Q.** And how long approximately were you at

11:19:23 7 central booking?

11:19:24 8 **A.** I don't recall.

11:19:24 9 **Q.** Okay. Do you remember approximately

11:19:26 10 what time you got to central booking?

11:19:28 11 **A.** I don't recall.

11:19:29 12 **Q.** Okay. Did you go straight from central

11:19:32 13 booking to ECMC?

11:19:33 14 **A.** Yes.

11:19:34 15 **Q.** Approximately how long did it take you

11:19:37 16 to get to ECMC from central booking?

11:19:39 17 **A.** I don't recall.

11:19:41 18 **Q.** Have you ever made the drive from

11:19:43 19 central booking to ECMC, other than this date?

11:19:49 20 **A.** I don't remember.

11:19:50 21 **Q.** Okay. Have you ever brought someone in

11:19:56 22 on a 941 form after they had been brought to

11:20:00 23 central booking?

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11:20:01 1 **MS. HUGGINS:** Form. You can answer.

11:20:03 2 **THE WITNESS:** I don't recall.

11:20:04 3 **BY MR. DAVENPORT:**

11:20:04 4 **Q.** Okay. Approximately --

11:20:05 5 **A.** For this incident we did.

11:20:09 6 **Q.** Sure. Sure. Approximately how many

11:20:11 7 times have you used a 941 form before as a police

11:20:15 8 officer or a lieutenant or a detective?

11:20:17 9 **A.** Numerous.

11:20:18 10 **Q.** Okay. Approximately how many times is

11:20:20 11 numerous?

11:20:22 12 **A.** I don't want to give a false estimate.

11:20:26 13 I -- I don't recall.

11:20:26 14 **Q.** Would it be more than a hundred?

11:20:30 15 **A.** Possibly.

11:20:30 16 **Q.** Okay. Would it be more than 50?

11:20:36 17 **A.** Yes.

11:20:36 18 **Q.** Okay. So, now, going through this

11:20:41 19 form, what sort of verbal cues did you indicate on

11:20:49 20 this form that Mr. Kistner was exhibiting that made

11:20:53 21 you -- led you to be concerned for his mental

11:20:56 22 health?

11:20:56 23 **A.** I checked off refusal to respond to

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11:20:59 1 questions, talking to self, hostile, argumentative,
11:20:59 2 belligerent, loud yelling, expresses idea of
11:20:59 3 inflated self-importance, and talks -- oh, I'm
11:20:59 4 sorry.

11:21:09 5 I put refusal to respond to questions,
11:21:11 6 talking to self, hostile, argumentative,
11:21:15 7 belligerent, loud yelling, expresses ideas of
11:21:19 8 inflated self-importance, and talks repeatedly
11:21:24 9 about a single subject, death, religion, illness,
11:21:29 10 government, et cetera.

11:21:30 11 And then in the narrative I put repeatedly
11:21:36 12 called officers Nazis and fascists.

11:21:39 13 Q. Okay. So, now, is there ever -- is
11:21:42 14 there a second page to a 941 form?

11:21:46 15 A. No.

11:21:46 16 Q. No. Is there anywhere where you can
11:21:52 17 add to your narrative besides these two and a half
11:21:56 18 lines that are given to you?

11:21:57 19 A. Just the justification for transport.

11:22:00 20 Q. Yes, for the just -- justification for
11:22:04 21 transport, is there anywhere else where you can add
11:22:06 22 to the narrative besides that section right there?

11:22:09 23 A. What was reported to the police about

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11:30:55 1 room besides Mr. Kistner?

11:30:57 2 **A.** At that time, no.

11:30:59 3 **Q.** Was there any ECMC staff that was in
11:31:02 4 the room?

11:31:02 5 **A.** When he was talking to himself, not
11:31:05 6 that I could recall.

11:31:08 7 **Q.** Approximately -- you can give a
11:31:10 8 percentage on this, approximately how much of the
11:31:13 9 time that Mr. Kistner was at ECMC before being
11:31:17 10 transferred to central booking was he in the room
11:31:22 11 by himself?

11:31:22 12 **MS. HUGGINS:** Form. You can answer.

11:31:24 13 **THE WITNESS:** Can you repeat that?

11:31:26 14 **BY MR. DAVENPORT:**

11:31:26 15 **Q.** So how -- how much of the time that
11:31:28 16 Mr. Kistner spent at ECMC before being transferred
11:31:31 17 to central booking was he in the hospital room by
11:31:35 18 himself?

11:31:38 19 **A.** We were right outside the door, so if
11:31:41 20 he wasn't being evaluated, that I could recall. I
11:31:45 21 don't know a specific amount of time.

11:31:48 22 **Q.** Do you recall approximately how many
11:31:51 23 individuals -- how many ECMC staff individuals

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11:31:58 1 evaluated Mr. Kistner?

11:32:00 2 **A.** No.

11:32:01 3 **Q.** Okay. Would it have been more than
11:32:03 4 five?

11:32:05 5 **MS. HUGGINS:** Form. You can answer.

11:32:07 6 **THE WITNESS:** I don't recall. I remember
11:32:10 7 one doctor.

11:32:14 8 **BY MR. DAVENPORT:**

11:32:16 9 **Q.** So, now, you said that you've done
11:32:19 10 other 941 forms before. Where do you typically
11:32:24 11 send individuals who are being evaluated under a
11:32:28 12 941?

11:32:28 13 **A.** We always take them to ECMC.

11:32:28 14 **Q.** Okay.

11:32:33 15 **A.** To CPEP.

11:32:33 16 **Q.** Do you typically deal with the same
11:32:38 17 individuals at ECMC in terms of staff there?

11:32:40 18 **A.** It varies.

11:32:41 19 **Q.** Okay. Was there anybody there present
11:32:45 20 at ECMC that day that you had recognized from a
11:32:49 21 previous 941?

11:32:51 22 **MS. HUGGINS:** Form. You can answer.

11:32:54 23 **BY MR. DAVENPORT:**

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11:32:55 1 **Q.** Was there anybody there --
11:32:56 2 **A.** Staff?
11:32:56 3 **Q.** -- present on January 1st of 2017 that
11:32:59 4 you recognized from a prior time that you had
11:33:02 5 brought an individual to ECMC on a 941?
11:33:05 6 **A.** I don't recall.
11:33:06 7 **Q.** Okay. Who would you typically deal
11:33:10 8 with at ECMC for a 941 evaluation?
11:33:14 9 **A.** For the 941 evaluation we come in
11:33:18 10 through the emergency room entrance, whether it's a
11:33:22 11 941 or a regular medical evaluation, we come in the
· 11:33:27 12 same way.
11:33:28 13 We stop at the reception window. They're
11:33:33 14 triaged for their vitals, and then they're
11:33:34 15 transported over to the CPEP portion of the
11:33:40 16 hospital.
11:33:40 17 **Q.** Okay. Do you typically stay with those
11:33:45 18 individuals after they're brought on a 941, do you
11:33:49 19 stay at ECMC?
11:33:50 20 **A.** We stay with them until they're taken
11:33:55 21 into the secure part of the psychiatric section.
11:33:57 22 **Q.** And what would that secure part be
11:34:00 23 called, what is that called?

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11:34:04 1 **A.** CPEP.

11:34:07 2 **Q.** Okay. And you mentioned the triage,
11:34:10 3 what was the triage referring to?

11:34:12 4 **A.** Just the part -- so you give your
11:34:13 5 paperwork in and then they sit with a nurse and
11:34:16 6 their vitals are taken; blood pressure,
11:34:19 7 temperature.

11:34:20 8 **Q.** Are there other individuals, other
11:34:22 9 patients who are in the triage?

11:34:24 10 **A.** It's a -- it's a room where just that
11:34:27 11 person is evaluated.

11:34:29 12 **Q.** And that person is in there by
11:34:33 13 themselves?

11:34:33 14 **A.** While they're being evaluated, yes.

11:34:38 15 **Q.** Okay. Approximately how many --

11:34:38 16 **A.** With an officer present, there's an
11:34:40 17 officer for just the vitals for the triage portion.

11:34:41 18 **Q.** Okay. Do you recall on January 1st of
11:34:45 19 2017, did you stay with Mr. Kistner in the triage?

11:34:49 20 **A.** I don't recall if we both did or one of
11:34:53 21 us did, myself or Officer McDermott. I don't
11:34:55 22 recall.

11:34:55 23 **Q.** You and Officer McDermott were

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11:34:57 1 traveling together on that day, correct?

11:34:59 2 **A.** Yes.

11:34:59 3 **Q.** And Officer McDermott is here today?

11:35:01 4 **A.** Yes.

11:35:01 5 **Q.** Okay. So on that day do you recall

11:35:09 6 leaving the hospital without Officer McDermott?

11:35:13 7 **A.** No.

11:35:14 8 **Q.** Do you recall Officer McDermott leaving
11:35:16 9 the hospital without you?

11:35:18 10 **A.** No.

11:35:19 11 **Q.** If you weren't in the triage when
11:35:26 12 Mr. Kistner was being evaluated, where else would
11:35:30 13 you have been?

11:35:30 14 **A.** I could possibly been outside the door
11:35:32 15 using the lavatory. I just -- I don't recall.

11:35:33 16 **Q.** Do you remember approximately how long
11:35:36 17 Mr. Kistner was in the triage?

11:35:37 18 **A.** I don't.

11:35:38 19 **Q.** Okay. Was it more than an hour?

11:35:40 20 **A.** I don't recall.

11:35:41 21 **Q.** Okay. When an individual is in the
11:35:44 22 triage, are they evaluated only by nurses or are
11:35:48 23 they also evaluated by a physician?

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12:05:01 1 **A.** Yes.

12:05:01 2 **Q.** Have you ever checked that box before?

12:05:03 3 **A.** No.

12:05:04 4 **Q.** Okay. What -- what sorts of -- strike

12:05:08 5 that.

12:05:08 6 What would a CIT crisis plan be?

12:05:13 7 **A.** I'm not trained on a CIT crisis plan,

12:05:18 8 so I would have to ask either crisis services about

12:05:21 9 that individual if there is a plan in place, but I

12:05:25 10 have never checked that box.

12:05:26 11 **Q.** Okay. Is a CIT crisis plan required

12:05:34 12 before an individual goes to CPEP?

12:05:38 13 **A.** Not that I'm aware of.

12:05:40 14 **Q.** Is a CIT crisis plan required after an

12:05:48 15 individual leaves CPEP?

12:05:49 16 **A.** I wouldn't know.

12:05:50 17 **Q.** Okay. That's not part of the crisis

12:05:52 18 intervention training that you received in 2019?

12:05:52 19 **A.** No, not for the what happens in the

12:05:54 20 CPEP evaluation, no.

12:05:56 21 **Q.** Okay. Now, turning again to the verbal

12:06:04 22 and behavioral cue talking to self. Now, did you

12:06:10 23 say that that was based on observations while

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12:06:14 1 Mr. Kistner was in his room at ECMC?

12:06:16 2 **A.** That I could recall, yes.

12:06:18 3 **Q.** Okay. Do you know if Mr. Kistner was
12:06:21 4 given any sort of a call button at ECMC?

12:06:26 5 **A.** I -- I know typically beds are equipped
12:06:29 6 with them, but I don't know that he used one.

12:06:33 7 **Q.** Okay. Is it possible that Mr. Kistner
12:06:38 8 would have been speaking into the call button at
12:06:43 9 his bed at ECMC?

12:06:43 10 **A.** It's possible that he did. I'm not
12:06:47 11 certain.

12:06:47 12 **Q.** Okay. Did you ever specifically see
12:06:50 13 Mr. Kistner talking to himself where you were sure
12:06:55 14 that he wasn't speaking into the call button?

12:06:58 15 **A.** Yes.

12:06:58 16 **Q.** Okay. Can you describe that?

12:06:59 17 **A.** He was laying in his bed laying
12:07:03 18 straight talking out loud.

12:07:04 19 **Q.** And it's impossible that he could have
12:07:08 20 been pressing the call button at the same time?

12:07:11 21 **A.** He may have been. He appeared to me at
12:07:15 22 the time to be talking to himself.

12:07:16 23 **Q.** Okay.

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12:07:16 1 **A.** Okay.

12:07:16 2 **Q.** But you don't know if he was or wasn't
12:07:19 3 pressing the call button at that time?

12:07:22 4 **A.** Correct, I don't recall.

12:07:23 5 **Q.** Okay. Now, you say in your statement
12:07:25 6 for justification for transport that the subject
12:07:28 7 did intentionally throw himself at the patrol
12:07:31 8 vehicle. Was that what you believed based on what
12:07:37 9 you personally saw that day on January 1st of 2017?

12:07:40 10 **A.** I did not personally see that.

12:07:42 11 **Q.** Okay. Did somebody tell you that
12:07:46 12 Mr. Kistner threw himself at a police vehicle?

12:07:48 13 **A.** Yes.

12:07:49 14 **Q.** And who told you that Mr. Kistner threw
12:07:53 15 himself at a patrol vehicle?

12:07:55 16 **A.** Officer McDermott and Officer Schulz.

12:07:57 17 **Q.** Okay. Now, you also have checked, and
12:08:06 18 I'm -- I apologize that there's a hole punch that's
12:08:11 19 through it, there's a check and it looks like it
12:08:15 20 says places self in dangerous situations; do you
12:08:18 21 see where that is?

12:08:18 22 **A.** Yes.

12:08:19 23 **Q.** Now, would that have been based off of

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12:08:23 1 your personal observations?

12:08:26 2 **A.** This was what was told to me by two
12:08:31 3 separate officers.

12:08:32 4 **Q.** Okay. But that wasn't based on what
12:08:35 5 you personally observed, correct?

12:08:37 6 **A.** Correct.

12:08:43 7 **Q.** Now, based off of what you have now
12:08:48 8 seen on the video, do you still believe that
12:08:52 9 Mr. Kistner threw himself intentionally at the
12:08:56 10 patrol vehicle?

12:08:56 11 **MS. HUGGINS:** Form. You may answer.

12:08:58 12 **THE WITNESS:** Can you repeat that? I'm
12:08:58 13 sorry.

12:08:58 14 **BY MR. DAVENPORT:**

12:09:01 15 **Q.** Based on what you saw from the video
12:09:03 16 surveillance that you watched last week, as
12:09:03 17 recently as last week, do you still believe that
12:09:07 18 Mr. Kistner intentionally threw himself at the
12:09:10 19 police vehicle?

12:09:11 20 **MS. HUGGINS:** Form. You may answer.

12:09:12 21 **THE WITNESS:** The perspective of the video
12:09:16 22 and my perspective are different. I was told
12:09:22 23 what -- what had happened. And based on what I see

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12:09:26 1 in the video it does appear that way.

12:09:29 2 **BY MR. DAVENPORT:**

12:09:30 3 **Q.** It appears that Mr. Kistner threw
12:09:34 4 himself intentionally at the police vehicle?

12:09:37 5 **A.** From my perspective of what I see in
12:09:37 6 the video, yes.

12:09:38 7 **Q.** Okay. So that's based on what you saw
12:09:40 8 in the video, then, correct?

12:09:40 9 **A.** From what I -- like I said, I had seen
12:09:44 10 the video after what was told me, so based on what
12:09:47 11 was told to me and what I see in the video
12:09:51 12 I -- that's still my -- my perspective of what I
12:09:54 13 see in the video.

12:09:54 14 **Q.** Okay. Excluding what was told to you,
12:09:58 15 based solely on what you see in the video, do you
12:10:01 16 believe that Mr. Kistner intentionally threw
12:10:04 17 himself at the police vehicle?

12:10:05 18 **MS. HUGGINS:** Form.

12:10:07 19 **THE WITNESS:** May I answer?

12:10:08 20 **MS. HUGGINS:** Yes, you may answer, sorry.

12:10:11 21 **THE WITNESS:** Yes.

12:10:11 22 **BY MR. DAVENPORT:**

12:10:12 23 **Q.** Okay. I just want to make sure.

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12:34:38 1 service.

12:34:38 2 Q. Okay. Do you get breaks during your
12:34:41 3 shift?

12:34:41 4 A. We can request a break, yes.

12:34:43 5 Q. Okay. How long do you typically take a
12:34:47 6 break, if you do request one?

12:34:48 7 A. It could be 30 minutes.

12:34:50 8 Q. Are you required to request a break at
12:34:54 9 some point during your shift?

12:34:54 10 A. We're not required to, it's optional.

12:34:57 11 Q. Okay. Typically your shifts are 10
12:35:00 12 hours, correct?

12:35:00 13 A. Yes.

12:35:01 14 Q. Okay. Do you ever take a break where
12:35:04 15 you don't request one, are there any mandated
12:35:09 16 breaks?

12:35:09 17 A. There --

12:35:09 18 MS. HUGGINS: Form. You can answer.

12:35:13 19 THE WITNESS: There are no mandated breaks.

12:35:15 20 BY MR. DAVENPORT:

12:35:15 21 Q. Okay. How often do you take 30-minute
12:35:17 22 breaks during your shifts?

12:35:19 23 A. Occasionally.

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12:35:21 1 **Q.** Okay. More or less than half the
12:35:24 2 shifts that you work?
12:35:26 3 **MS. HUGGINS:** Form.
12:35:27 4 **THE WITNESS:** I'm not certain.
12:35:31 5 **BY MR. DAVENPORT:**
12:35:32 6 **Q.** Do you ever take a lunch break during
12:35:34 7 your shift?
12:35:34 8 **A.** That would be the lunch break.
12:35:36 9 **Q.** Okay. Do you ever eat your lunch in
12:35:39 10 your car?
12:35:39 11 **A.** Yes.
12:35:40 12 **Q.** Okay. Is that most of the time?
12:35:42 13 **A.** Sometimes.
12:35:43 14 **Q.** Do you sometimes not eat lunch during
12:35:46 15 the day?
12:35:46 16 **A.** I eat something every day.
12:35:48 17 **Q.** Okay. Snacks, then?
12:35:50 18 **A.** It could be a snack or it could be a
12:35:53 19 lunch.
12:35:53 20 **Q.** Okay. Do you recall eating on
12:35:56 21 January 1st of 2017?
12:35:57 22 **A.** I do not.
12:36:00 23 **Q.** Okay. Now, your next call is at

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12:36:07 1 10:36 a.m. and you were dispatched for domestic
12:36:11 2 trouble; do you see that?

12:36:11 3 **A.** Yes.

12:36:12 4 **Q.** Do you remember anything about that
12:36:13 5 call?

12:36:14 6 **A.** I do not.

12:36:15 7 **Q.** Okay. Now, at 10:57 a.m. it says that
12:36:21 8 you were dispatched for an accident or injury at 37
12:36:26 9 Schmarbeck; do you see that?

12:36:27 10 **A.** Yes.

12:36:27 11 **Q.** Who would have made that initial entry
12:36:32 12 for accident or injury?

12:36:33 13 **A.** The dispatcher enters it.

12:36:35 14 **Q.** And how would the dispatcher enter that
12:36:38 15 information?

12:36:38 16 **A.** It could -- it could be a call in from
12:36:41 17 police, it could be a call in from a citizen.

12:36:46 18 However they received the information they would
12:36:49 19 dispatch a call.

12:36:51 20 **Q.** Okay. Now, it says at 11:22 your
12:37:02 21 location change was ECMC; do you see that?

12:37:05 22 **A.** Yes.

12:37:09 23 **Q.** Would that mean that you had arrived at

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12:37:12 1 ECMC or that you were on your way to ECMC?

12:37:17 2 A. It could be either one.

12:37:18 3 Q. Okay. What's your typical practice, do
12:37:25 4 you usually radio in when you arrive at a situation
12:37:28 5 or when you're on your way to a -- or a new
12:37:28 6 location?

12:37:31 7 MS. HUGGINS: Form. You can answer.

12:37:33 8 THE WITNESS: Typically when we're leaving
12:37:34 9 to go to the situation or to the location. Excuse
12:37:39 10 me.

12:37:39 11 BY MR. DAVENPORT:

12:37:40 12 Q. Okay. I asked both of them, so I
12:37:42 13 definitely understand why you said that.

12:37:44 14 Now, it says at 3:37 your location was to
12:37:52 15 CB; do you see that?

12:37:53 16 A. Yes.

12:37:54 17 Q. Does that refer to central booking?

12:37:56 18 A. Yes, I believe so.

12:37:58 19 Q. Okay. Now, at 3:48 p.m. it says on
12:38:09 20 scene; do you see that?

12:38:09 21 A. Yes.

12:38:10 22 Q. Would that mean that you were on scene
12:38:12 23 at central booking?

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12:38:14 1 **A.** Yes.

12:38:21 2 **Q.** Now, at 4:36 p.m. your location changed
12:38:27 3 again to ECMC; do you see that?

12:38:28 4 **A.** Yes.

12:38:29 5 **Q.** Now, that would mean in your typical
12:38:33 6 practice that you were on your way to ECMC,
12:38:37 7 correct, not necessarily what you did that day, I
12:38:39 8 just want to know typical practice, you normally
12:38:42 9 radio in on your way to a new location?

12:38:44 10 **A.** Uh-huh.

12:38:45 11 **Q.** So based on your typical practice that
12:38:48 12 would mean you're on your way to ECMC, correct?

12:38:48 13 **A.** Yes.

12:38:48 14 **Q.** Okay.

12:38:53 15 **A.** But, again, it would depend on how
12:38:56 16 dispatch took our transmission. They would be the
12:38:59 17 ones responsible for entering this.

12:39:01 18 **Q.** Okay. Now, at 4:37 p.m. it says en
12:39:07 19 route; do you see that?

12:39:07 20 **A.** Yes.

12:39:08 21 **Q.** Now, based on that entry, would you say
12:39:11 22 that your location change ECMC was made on your way
12:39:16 23 to ECMC prior to you actually leaving central

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12:43:15 1 **Q.** Okay. So on this day you would have
12:43:18 2 collected overtime for two hours and 16 minutes
12:43:21 3 over your shift?

12:43:22 4 **MS. HUGGINS:** Form.

12:43:24 5 **THE WITNESS:** I'm not certain exactly what
12:43:27 6 time my shift ended. So if -- like I said, I'm not
12:43:31 7 sure if it was 6:16 or if I had stayed additional
12:43:35 8 time. I'm not certain.

12:43:36 9 **BY MR. DAVENPORT:**

12:43:36 10 **Q.** If you stay additional time to work on
12:43:39 11 paperwork, do you have to make any sort of an entry
12:43:42 12 to end your shift?

12:43:43 13 **A.** We fill out a form.

12:43:45 14 **Q.** That's each day?

12:43:46 15 **A.** If we stay, if we fill out an overtime
12:43:52 16 slip if we stay for every time we stay, yes.

12:43:53 17 **Q.** Okay. Are there any times that you are
12:43:59 18 required to or that you would fill out paperwork
12:44:03 19 during your regularly scheduled 10-hour shift?

12:44:06 20 **MS. HUGGINS:** Form.

12:44:07 21 **BY MR. DAVENPORT:**

12:44:08 22 **Q.** I'm sorry. That was a bad question.

12:44:10 23 Are you required to patrol for your entire

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12:44:15 1 10-hour shift?

12:44:18 2 A. Minus the break we -- yes.

12:44:19 3 Q. Okay. So there would never be any time
12:44:25 4 that you would end your shift early to complete
12:44:27 5 paperwork, correct?

12:44:29 6 A. It depends. We would still be working,
12:44:32 7 but I may call myself back to the station house to
12:44:35 8 complete paperwork. Or field training officers
12:44:37 9 they -- I believe it's -- I don't recall if it's
12:44:39 10 30 minutes or a little bit longer to complete their
12:44:43 11 field training officer paperwork.

12:44:44 12 So there are instances where you would call
12:44:47 13 yourself out of service just prior to the end of
12:44:50 14 your shift to complete documents.

12:44:51 15 Q. Okay. So I'm going to show you what's
12:45:03 16 been marked as Exhibit 3. Do you recognize that
12:45:07 17 document?

12:45:09 18 A. Yes.

12:45:11 19 Q. And what do you recognize it to be?

12:45:13 20 A. A complaint summary report.

12:45:14 21 Q. Where was the location for that
12:45:16 22 complaint summary report?

12:45:17 23 A. 33 Schmarbeck.

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12:45:20 1 **Q.** Do you know the individual who was the
12:45:23 2 complainant for that complaint summary report?

12:45:25 3 **A.** I do not.

12:45:26 4 **Q.** Have you ever encountered any
12:45:28 5 individuals while working at C District at the
12:45:32 6 location 33 Schmarbeck?

12:45:33 7 **A.** Not that I can recall.

12:45:36 8 **Q.** Okay. Do you know which officers
12:45:37 9 responded to that call at 33 Schmarbeck?

12:45:40 10 **A.** Yes.

12:45:40 11 **Q.** Okay. And which officers were those?

12:45:43 12 **A.** Kyle Moriarity and Carl Schulz.

12:45:47 13 **Q.** What brought you to the scene that day
12:45:50 14 for that complaint summary report?

12:45:54 15 **A.** From what I can recall, Officer
12:45:58 16 McDermott had responded there before, so she wanted
12:46:02 17 to see if they needed any assistance and give them
12:46:05 18 information that she may have had from previously
12:46:08 19 responding.

12:46:08 20 **Q.** Okay. Did she talk to you at all about
12:46:11 21 previously responding for that individual?

12:46:14 22 **A.** I don't recall anything specific.

12:46:16 23 **Q.** Okay. Did she tell you when

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12:46:18 1 approximately she had previously responded?

12:46:20 2 **A.** I don't --

12:46:22 3 **Q.** For that location?

12:46:22 4 **A.** I don't recall.

12:46:23 5 **Q.** Did she tell you the information that
12:46:25 6 she wanted to convey to Mr. Moriarity or Mr. Schulz
12:46:29 7 that day?

12:46:30 8 **A.** I don't recall.

12:46:31 9 **Q.** Okay. Did she say the name of the
12:46:34 10 individual that she had encountered previously?

12:46:37 11 **A.** Not that I can recall.

12:46:38 12 **Q.** Okay. Since this incident has she
12:46:43 13 discussed any incidents that she has responded to
12:46:47 14 at 33 Schmarbeck?

12:46:48 15 **A.** No.

12:46:49 16 **Q.** Okay. What about 37 Schmarbeck?

12:46:51 17 **A.** No.

12:46:53 18 **Q.** Okay.

12:46:53 19 **MS. HUGGINS:** Form.

12:46:53 20 **BY MR. DAVENPORT:**

12:46:54 21 **Q.** Besides January 1st of 2017, did you
12:46:59 22 ride with Ms. McDermott on any other occasions?

12:47:03 23 **A.** Yes.

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12:47:03 1 **Q.** Okay. Were there any other times where
12:47:06 2 a call was made from 33 or 37 Schmarbeck where you
12:47:12 3 and Ms. McDermott went to go and investigate the
12:47:15 4 situation?

12:47:15 5 **A.** Not that I could recall.

12:47:16 6 **Q.** But on this specific day she wanted to
12:47:19 7 go to this call at 33 Schmarbeck, because she
12:47:22 8 recalled responding to a previous incident there?

12:47:25 9 **A.** Yes.

12:47:25 10 **Q.** Okay. Approximately what time did you
12:47:33 11 arrive at the scene that day?

12:47:35 12 **A.** I don't recall.

12:47:36 13 **Q.** Okay. Was it in the morning?

12:47:38 14 **A.** It was.

12:47:38 15 **Q.** Do you remember what the weather was
12:47:41 16 like that day?

12:47:42 17 **A.** Not specifically.

12:47:43 18 **Q.** Was it cold?

12:47:44 19 **A.** Yes.

12:47:45 20 **Q.** Okay. Was it icy?

12:47:47 21 **A.** I don't recall.

12:47:48 22 **Q.** Do you recall any trouble walking that
12:47:51 23 day?

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12:47:52 1 **A.** Not that I could recall.

12:47:54 2 **Q.** What types of shoes do you typically
12:47:58 3 wear as a patrol officer?

12:48:02 4 **A.** I wear Bates boots.

12:48:04 5 **Q.** Okay. And that was the same at that
12:48:06 6 time in January -- on January 1st of 2017?

12:48:06 7 **A.** Yes, they're department issued. I wear
12:48:08 8 them all the time.

12:48:09 9 **Q.** Okay. And those are the same boots
12:48:12 10 that are issued today?

12:48:13 11 **A.** Yes.

12:48:14 12 **Q.** Do you recall where you were
12:48:17 13 approximately at the time that Ms. McDermott
12:48:20 14 decided that she would help Officer Schulz and
12:48:24 15 Officer Moriarity with that call at 33 Schmarbeck?

12:48:28 16 **MS. HUGGINS:** Form. You may answer.

12:48:29 17 **THE WITNESS:** I don't recall.

12:48:30 18 **BY MR. DAVENPORT:**

12:48:31 19 **Q.** Do you recall approximately how long it
12:48:32 20 took you to drive from where you were previously to
12:48:34 21 33 Schmarbeck?

12:48:35 22 **A.** I don't recall.

12:48:36 23 **Q.** Okay. When you arrived at the scene,

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12:48:38 1 what did you see?

12:48:40 2 A. I don't recall.

12:48:42 3 Q. Was there a car that was present that
12:48:45 4 day?

12:48:50 5 A. I believe there -- we had parked behind
12:48:53 6 a car.

12:48:54 7 Q. Okay. Do you remember the -- the color
12:48:57 8 of that car?

12:48:58 9 A. I do not.

12:48:58 10 Q. Do you remember what type of a car it
12:49:06 11 was?

12:49:06 12 A. I do not.

12:49:07 13 Q. Okay. Was it a large or a small
12:49:10 14 vehicle?

12:49:15 15 A. I think it was a van.

12:49:17 16 Q. Okay.

12:49:17 17 A. I believe it was a van.

12:49:18 18 Q. Okay. When you arrived at the scene,
12:49:22 19 were Officer Schulz or Officer Moriarity outside of
12:49:26 20 their vehicle?

12:49:29 21 A. I could recall -- I -- no, I don't, I
12:49:35 22 don't recall who was outside of the vehicle.

12:49:36 23 Q. Okay. Was there an individual standing

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12:49:41 1 on the sidewalk at that time?

12:49:42 2 **A.** I don't recall.

12:49:44 3 **Q.** Do you recall at any point was there an
12:49:47 4 individual standing on the sidewalk?

12:49:49 5 **A.** I don't recall.

12:49:50 6 **Q.** Do you recall at any time was Officer
12:49:52 7 Schulz or Officer Moriarity outside of their
12:49:55 8 vehicle?

12:49:57 9 **A.** Can you?

12:49:59 10 **Q.** Prior to -- strike that.

12:50:05 11 Do you recall at any time during the
12:50:07 12 incident that was responded to by Officer Schulz
12:50:10 13 and Officer Moriarity at 33 Schmarbeck at any point
12:50:14 14 while you were there were Officer Schulz or Officer
12:50:18 15 Moriarity outside of their vehicle?

12:50:19 16 **A.** I recall off -- one of them being
12:50:21 17 outside of their vehicle, but I don't recall who it
12:50:23 18 was.

12:50:23 19 **Q.** Now, the officer that was not outside
12:50:25 20 of their vehicle that was still inside the parked
12:50:29 21 car, did they have their window up or down?

12:50:31 22 **A.** I don't recall them being inside the
12:50:33 23 parked car. I just -- I just remember one officer

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12:50:36 1 being outside of the car. I don't recall where the
12:50:37 2 other officer was and I don't recall if it was
12:50:39 3 Kyle, Officer Moriarity or -- or Officer Schulz.

12:50:42 4 **MS. HUGGINS:** Do her a favor and just slow
12:50:45 5 down.

12:50:45 6 **THE WITNESS:** Yeah, on the sidewalk, I don't
12:50:45 7 recall.

12:50:45 8 **BY MR. DAVENPORT:**

12:50:45 9 **Q.** Okay.

12:50:48 10 **A.** Or if they were in the street. I just
12:50:48 11 remember them being outside of the car, one of
12:50:48 12 them.

12:50:54 13 **Q.** Do you recall approximately how long
12:50:55 14 you were at the scene responding to that incident
12:50:58 15 at 33 Schmarbeck?

12:50:59 16 **A.** I do not.

12:51:00 17 **Q.** Okay. Based on what is recorded on
12:51:04 18 that document, does that refresh your recollection
12:51:05 19 for how long you were at that scene?

12:51:08 20 **A.** No.

12:51:08 21 **Q.** Okay. Is there any reason to dispute
12:51:13 22 that the time entries on there that would indicate
12:51:16 23 that Officer Schulz and Officer Moriarity were at

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13:28:20 1 regarding paperwork or anything of that nature with
13:28:23 2 the booking process, I would defer to him, because
13:28:26 3 he was a lieutenant.

13:28:27 4 **Q.** What sorts of issues would you have
13:28:29 5 with paperwork, would it be penal statutes or, you
13:28:34 6 know, I guess, what sorts of questions would you
13:28:36 7 ask of this lieutenant at central booking?

13:28:39 8 **A.** It depends. It could vary, it could be
13:28:40 9 paperwork, it could be a situation, correct
13:28:43 10 charges.

13:28:43 11 **Q.** Okay. What other sorts of paperwork
13:28:47 12 would you typically fill out at central booking?

13:28:51 13 **A.** We just turn in our 163, the report
13:28:55 14 technicians complete the documentation for us.

13:28:59 15 **Q.** And, I'm sorry, what does a 163 refer
13:29:02 16 to?

13:29:03 17 **A.** The arrest form.

13:29:05 18 **Q.** Okay. Do you give that 163 arrest form
13:29:16 19 to central booking after it's completed?

13:29:19 20 **A.** Yes.

13:29:19 21 **Q.** Okay. And then do you know who central
13:29:23 22 booking takes that arrest form to?

13:29:25 23 **A.** As I explained, when we come in for the

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13:29:28 1 arrest process, we give it to the -- at the window.
13:29:30 2 And then that report technician makes a copy, gives
13:29:34 3 us the copy so we can complete the booking process
13:29:37 4 with the prisoner.

13:29:38 5 And then a second copy goes back to the
13:29:40 6 report technicians who complete our court
13:29:43 7 documentation, our complaints, the rest of the
13:29:45 8 forms that need to be completed for the court file.

13:29:47 9 **Q.** Okay. After those forms are completed,
13:29:50 10 would the arresting officer sign off on those
13:29:53 11 criminal complaint documents?

13:29:55 12 **A.** If they're the complainant on it, if
13:29:58 13 the State of New York is the complainant on it, if
13:30:00 14 we're the complainant on it, then yes.

13:30:01 15 **Q.** Okay. If an individual who is not a
13:30:04 16 police officer is the complainant, they would sign
13:30:06 17 off on the arrest forms or criminal complaint
13:30:07 18 forms?

13:30:07 19 **A.** If they were present, if they came down
13:30:09 20 to central booking, they can sign. At one time we
13:30:12 21 could sign on information and belief, so we would
13:30:13 22 sign on -- on behalf of them if they gave us a
13:30:17 23 supporting deposition that said we want to be a

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13:30:19 1 complaint, they're just not present. So those are
13:30:22 2 the times we would sign. I'm sorry.

13:30:25 3 Q. Okay. Now, do you see underneath zip
13:30:40 4 code on the appearance ticket where it says
13:30:43 5 records? It's directly above part two that's
13:30:48 6 underlined and bolded; do you see that?

13:30:49 7 A. Yes.

13:30:50 8 Q. What is that referring to?

13:30:54 9 A. What part of it are you referring to
13:30:58 10 that is referring to?

13:30:59 11 Q. Well, there's records that is written
13:31:02 12 underneath zip code and directly above part two
13:31:06 13 which is underlined and bolded. Do you know why
13:31:10 14 records would be written in that section?

13:31:13 15 A. I did not create this document. I -- I
13:31:16 16 don't know.

13:31:16 17 Q. Okay. Now, you were a passenger with
13:31:48 18 Ms. McDermott on January 1st of 2017, correct?

13:31:51 19 A. Yes.

13:31:52 20 Q. Were you a passenger at the time that
13:31:55 21 the car and Mr. Kistner collided with each other?

13:31:59 22 MS. HUGGINS: Form. You may answer.

13:32:00 23 THE WITNESS: I was in the passenger's side

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13:32:02 1 during the incident.

13:32:03 2 **BY MR. DAVENPORT:**

13:32:03 3 **Q.** Okay. Did you see that incident?

13:32:05 4 **A.** I did not.

13:32:06 5 **Q.** Okay. So you didn't see the car make
13:32:11 6 contact with Mr. Kistner?

13:32:11 7 **MS. HUGGINS:** Form. You may answer.

13:32:13 8 **THE WITNESS:** I did not see Mr. Kistner make
13:32:16 9 contact with the car.

13:32:16 10 **THE REPORTER:** I'm sorry?

13:32:16 11 **THE WITNESS:** I did not see Mr. Kistner make
13:32:18 12 contact with the car.

13:32:18 13 **BY MR. DAVENPORT:**

13:32:18 14 **Q.** Did Ms. McDermott tell you that she saw
13:32:21 15 the incident, the collision with Mr. Kistner in the
13:32:25 16 vehicle?

13:32:25 17 **A.** She did.

13:32:26 18 **Q.** Okay. And what did she tell you?

13:32:29 19 **A.** She told me that Mr. Kistner had -- I
13:32:32 20 can't remember if she said threw himself or put
13:32:35 21 himself into the mirror of the car.

13:32:38 22 **Q.** Okay. Did you happen to observe what
13:32:41 23 the mirror looked like on the driver's side of that

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13:32:45 1 vehicle after the collision?

13:32:46 2 **A.** I did.

13:32:46 3 **Q.** Okay. And how did it appear to you?

13:32:48 4 **A.** That it was dislodged from the body of
13:32:51 5 the car.

13:32:52 6 **Q.** Now, when you say dislodged, was it
13:32:55 7 still attached but it was partially detached from
13:32:59 8 the car?

13:32:59 9 **A.** Yes.

13:32:59 10 **Q.** Okay. So it -- it was still there on
13:33:03 11 the car, it hadn't fallen off completely, correct?

13:33:07 12 **A.** Correct.

13:33:07 13 **Q.** Okay. Was there any damage to the
13:33:09 14 glass on that mirror?

13:33:12 15 **A.** The glass itself was not damaged.

13:33:16 16 **Q.** Okay. Did you try to use or did
13:33:24 17 Ms. McDermott try to use the window on the driver's
13:33:27 18 side of that vehicle that day?

13:33:29 19 **A.** She did.

13:33:29 20 **Q.** Okay. Were you present when she tried
13:33:32 21 to use the window?

13:33:33 22 **A.** Yes.

13:33:33 23 **Q.** Okay. Did it make any sort of a

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13:33:37 1 screeching sound or anything like that?

13:33:40 2 **A.** It did, it -- it made a noise and it
13:33:42 3 like wiggled and hesitated to go up and down.

13:33:45 4 **Q.** Okay. What car were you driving that
13:33:47 5 day?

13:33:47 6 **A.** I wasn't driving that day.

13:33:49 7 **Q.** Excuse me. What car were you a
13:33:51 8 passenger in that day?

13:33:53 9 **A.** I believe it was 473.

13:33:55 10 **Q.** Okay. Did you and Ms. McDermott have a
13:33:57 11 specific vehicle that you liked to use?

13:34:00 12 **A.** She had -- she preferred 473. I
13:34:05 13 preferred 472.

13:34:06 14 **Q.** Okay. Was there any reason why car 473
13:34:11 15 was used on the day of the incident?

13:34:14 16 **A.** Availability.

13:34:14 17 **Q.** Okay. Did you use car 473 again after
13:34:18 18 January 1st of 2017?

13:34:19 19 **A.** I'm sure we did. If Officer McDermott
13:34:22 20 was driving, she -- she would drive that car.

13:34:25 21 **Q.** Okay. Do you recall when your next
13:34:27 22 shift would have been after January 1st of 2017?

13:34:29 23 **A.** I don't recall.

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13:34:31 1 **Q.** Okay. Would it have been before
13:34:36 2 January 5th of 2017?

13:34:40 3 **A.** It would have. Well, if January 1 was
13:34:44 4 our last day, the most we could have been off was
13:34:48 5 for four days, so then we would have been back.

13:34:51 6 So if -- if January 1 was our last day,
13:34:55 7 because I don't recall, we would have been -- the
13:34:55 8 most we -- the longest we could have been off was
13:34:56 9 the 2nd, 3rd, 4th, 5th.

13:35:00 10 So the earliest would have been January 6th
13:35:03 11 or 5th, if we were off for three.

13:35:06 12 **Q.** Okay. Do you know when the next time
13:35:08 13 would have been that you would use car 473?

13:35:11 14 **A.** No.

13:35:11 15 **Q.** Okay. Do you recall if the next time
13:35:13 16 that you used car 473 did it have a dislodged
13:35:17 17 mirror or were there any issues with the driver's
13:35:20 18 side window?

13:35:20 19 **A.** I don't recall.

13:35:21 20 **Q.** Okay. Do you recall ever driving the
13:35:23 21 vehicle again where it had a dislodged mirror or
13:35:27 22 issues with the driver's side window?

13:35:28 23 **A.** I don't recall driving 473 at all.

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13:35:31 1 Like I said, I would prefer to drive 472, but I
13:35:35 2 don't recall being in that vehicle in -- with an
13:35:39 3 issue.

13:35:39 4 Like I don't recall after that incident when
13:35:41 5 was the next time we had taken that vehicle. I
13:35:44 6 don't recall.

13:35:44 7 **Q.** Do you recall ever being in a police
13:35:47 8 vehicle where the driver's side mirror was
13:35:50 9 dislodged or the driver's side window had issues
13:35:53 10 with going up and down?

13:35:55 11 **MS. HUGGINS:** Form. You can answer.

13:35:57 12 **THE WITNESS:** I've driven vehicles that have
13:35:59 13 had issues with windows before.

13:36:02 14 **BY MR. DAVENPORT:**

13:36:02 15 **Q.** And what sort of issues were those?

13:36:05 16 **A.** I had one that the window wouldn't go
13:36:08 17 down before.

13:36:09 18 **Q.** But you were never in a vehicle where
13:36:13 19 the window would make noises as it was going down,
13:36:17 20 correct?

13:36:17 21 **A.** Correct.

13:36:17 22 **Q.** Okay. Do you recall what car you were
13:36:19 23 driving when the window would not go down?

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13:36:24 1 **A.** It may have been a Crown Vic, a Crown
13:36:28 2 Victoria, the old model car we had, because we had
13:36:31 3 some that were very old.

13:36:33 4 **Q.** Okay. Now, on the day of the incident
13:36:36 5 did you make any sort of an estimation as to how
13:36:40 6 much damage was caused to car 473 by this incident?

13:36:44 7 **A.** I did not.

13:36:45 8 **Q.** Okay. Would you agree or disagree that
13:36:47 9 it was more than \$250 worth of damage to the
13:36:50 10 vehicle?

13:36:51 11 **MS. HUGGINS:** Form. You can answer.

13:36:52 12 **THE WITNESS:** I'm not a professional, I -- I
13:36:54 13 would not know.

13:36:55 14 **BY MR. DAVENPORT:**

13:36:55 15 **Q.** On the day of the incident did you
13:36:57 16 believe is that it was more than \$250 worth of
13:37:01 17 damage to the vehicle?

13:37:02 18 **A.** Based on the information that was given
13:37:04 19 to me by Officer McDermott on the damage and the
13:37:08 20 charges that she signed on, yes.

13:37:10 21 **Q.** But that wasn't based off of your
13:37:12 22 personal observation of the damage to the vehicle?

13:37:14 23 **A.** I can't estimate that. I don't know

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13:37:17 1 how much that would cost.

13:37:18 2 Q. Do you know if Ms. McDermott can make
13:37:21 3 that estimation?

13:37:21 4 A. You would have to ask Officer
13:37:21 5 McDermott.

13:37:21 6 Q. Is she trained on how to make those
13:37:25 7 estimations?

13:37:25 8 A. You would have to ask Officer
13:37:25 9 McDermott.

13:37:28 10 Q. Are you trained on how to make those
13:37:29 11 estimations?

13:37:29 12 A. I am not.

13:37:30 13 Q. Okay. Are any police officers trained
13:37:32 14 on how to make those estimations?

13:37:35 15 A. I don't know.

13:37:36 16 Q. Okay. I'm going to show you what's
13:37:37 17 been marked as Exhibit 18. Do you recognize this
13:37:45 18 document?

13:37:48 19 A. I've -- no, I haven't seen one of
13:37:51 20 these.

13:37:53 21 Q. Do you see where it's written
13:37:56 22 underneath fleet management what is written?

13:37:58 23 A. Yes.

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13:37:59 1 **Q.** What's written?

13:38:00 2 **A.** Maintenance work order.

13:38:02 3 **Q.** Okay. Do you have any reason to

13:38:04 4 dispute that this is a maintenance work order?

13:38:06 5 **A.** No.

13:38:07 6 **Q.** Do you have any reason to dispute that

13:38:10 7 this is a maintenance work order that was made and

13:38:12 8 created by the City of Buffalo?

13:38:14 9 **MS. HUGGINS:** Form.

13:38:14 10 **THE WITNESS:** It has a seal on it, no.

13:38:17 11 Again, no.

13:38:18 12 **BY MR. DAVENPORT:**

13:38:18 13 **Q.** Okay. Now, looking at this for the

13:38:24 14 vehicle information, what car was fixed according

13:38:27 15 to this maintenance work order?

13:38:30 16 **A.** This has unit 473 on it.

13:38:33 17 **Q.** Okay. And what was the date of

13:38:36 18 service?

13:38:37 19 **A.** 1/5 of '17.

13:38:39 20 **Q.** Okay. And on the day of the incident

13:38:42 21 you and Ms. McDermott were driving car 473,

13:38:46 22 correct?

13:38:46 23 **A.** Officer McDermott was driving. I was

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13:03:00 1 Q. Would it be fair to say that
13:03:02 2 that -- those would have been the only sources
13:03:04 3 where he could have received that information?

13:03:06 4 MS. HUGGINS: Form.

13:03:06 5 THE WITNESS: Again, I'm not certain where
13:03:09 6 he -- how they get their information from -- if
13:03:11 7 they get it from the county, 911, officers,
13:03:14 8 civilians. I'm not certain where he got this
13:03:17 9 information from.

13:03:17 10 BY MR. DAVENPORT:

13:03:18 11 Q. Sure. But you did say it would either
13:03:20 12 come from officers or civilians. So would it be
13:03:23 13 fair to say that that entry would have to be made
13:03:26 14 by either an officer based on information that he
13:03:29 15 receives either from an officer or an individual at
13:03:31 16 the scene?

13:03:31 17 MS. HUGGINS: Form.

13:03:32 18 THE WITNESS: It's a possibly.

13:03:32 19 BY MR. DAVENPORT:

13:03:33 20 Q. Okay. Would there be any other sources
13:03:35 21 where he could have received that information from?

13:03:36 22 A. I'm not trained in dispatch.

13:03:38 23 Q. Okay. Now, at 11:22:34 it says

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13:03:44 1 location changed, C230 ECMC; do you see that?

13:03:48 2 **A.** Yes.

13:03:48 3 **Q.** And call sign C230, do you know who

13:03:54 4 that referred to on the day of the incident?

13:03:57 5 **A.** I'm not certain who it was assigned to.

13:04:00 6 **Q.** But it's neither you or Ms. McDermott,

13:04:04 7 correct?

13:04:04 8 **A.** Correct.

13:04:04 9 **Q.** Would it be fair to say that it was

13:04:07 10 either Carl Schulz or Kyle Moriarity?

13:04:10 11 **A.** I believe so.

13:04:12 12 **Q.** It wouldn't refer to any other

13:04:14 13 officers, correct?

13:04:14 14 **A.** Correct.

13:04:15 15 **Q.** Okay. Now, at 11:22:40 it says

13:04:21 16 location change, C241 ECMC; would that refer to

13:04:26 17 Ms. McDermott?

13:04:27 18 **A.** Yes.

13:04:27 19 **Q.** Do you see at 11:22:4 a.m. location

13:04:32 20 change, C242 ECMC?

13:04:34 21 **A.** Yes.

13:04:34 22 **Q.** Now, what would cause that six-second

13:04:39 23 difference between you and Ms. McDermott for the

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13:04:42 1 location change?

13:04:42 2 **MS. HUGGINS:** Form.

13:04:43 3 **THE WITNESS:** That would be dispatch.

13:04:44 4 **BY MR. DAVENPORT:**

13:04:45 5 Q. Okay. Did you and Ms. McDermott have
13:04:47 6 to contact dispatch separately in order to change
13:04:51 7 your location?

13:04:52 8 A. We could do it together. Radio
13:04:54 9 may -- dispatch may just do it, because they know
13:04:57 10 we're riding together.

13:04:58 11 Q. Okay. Now, at 11:23:01 C230 will be a
13:05:07 12 941; do you see that entry?

13:05:09 13 A. Yes.

13:05:09 14 Q. Okay. And C230 does not refer you to
13:05:13 15 either you or Ms. McDermott, correct?

13:05:15 16 A. Correct.

13:05:16 17 Q. When it says will be a 941, what does
13:05:19 18 that say to you?

13:05:20 19 **MS. HUGGINS:** Form.

13:05:20 20 **THE WITNESS:** Will be a 941 it says it's a
13:05:28 21 mental health evaluation.

13:05:31 22 **BY MR. DAVENPORT:**

13:05:32 23 Q. Now, at that time, had you, personally,

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13:05:36 1 made any observations of Mr. Kistner that would
13:05:40 2 lead you to believe that he needed a 941 mental
13:05:44 3 health evaluation?

13:05:46 4 A. That I personally observed?

13:05:47 5 Q. You, personally.

13:05:48 6 A. No.

13:05:49 7 Q. Okay. Did you and the other officers
13:05:51 8 discuss whether Mr. Kistner would be subjected to a
13:05:52 9 941 evaluation before leaving Schmarbeck?

13:05:56 10 A. I did not.

13:05:57 11 Q. Do you know if Ms. McDermott discussed
13:06:00 12 with any of the other officers whether Mr. Kistner
13:06:03 13 would be subjected to a 941 --

13:06:03 14 A. I don't --

13:06:03 15 Q. -- examination?

13:06:04 16 A. I don't know.

13:06:04 17 Q. When Mr. Kistner was being brought to
13:06:07 18 ECMC, did you have any reason to believe that he
13:06:09 19 would be evaluated for a mental health evaluation?

13:06:12 20 MS. HUGGINS: Form.

13:06:13 21 THE WITNESS: I don't recall knowing that he
13:06:15 22 was going up for a 941. I recall believing it was
13:06:20 23 going to be a medical evaluation.

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13:06:21 1 **BY MR. DAVENPORT:**

13:06:22 2 Q. And when you say a medical evaluation,
13:06:23 3 that refers to any physical injuries?

13:06:25 4 A. Correct.

13:06:26 5 Q. What about mental health or anything
13:06:28 6 like that?

13:06:29 7 A. No.

13:06:30 8 Q. Okay. Would physical injuries also
13:06:34 9 include any head trauma?

13:06:36 10 A. It would be a complete evaluation.

13:06:38 11 Q. Okay. So do you know if the location
13:06:53 12 change at 11:22 -- in between 11:22:34 and
13:07:00 13 11:22:46, were you and the other officers at ECMC
13:07:04 14 at that time or were you preparing to leave for
13:07:06 15 ECMC?

13:07:08 16 A. I'm sorry. Can you give me those two
13:07:11 17 times again?

13:07:11 18 Q. Sure. So at location -- at time
13:07:13 19 11:22:34 and 11:22:46, those entries for location
13:07:20 20 change, do you know if you and the other officers
13:07:23 21 would have been traveling to ECMC or if you would
13:07:27 22 have already been at ECMC at that time?

13:07:29 23 A. I don't recall.

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13:32:02 1 during the incident.

13:32:03 2 **BY MR. DAVENPORT:**

13:32:03 3 **Q.** Okay. Did you see that incident?

13:32:05 4 **A.** I did not.

13:32:06 5 **Q.** Okay. So you didn't see the car make
13:32:11 6 contact with Mr. Kistner?

13:32:11 7 **MS. HUGGINS:** Form. You may answer.

13:32:13 8 **THE WITNESS:** I did not see Mr. Kistner make
13:32:16 9 contact with the car.

13:32:16 10 **THE REPORTER:** I'm sorry?

13:32:16 11 **THE WITNESS:** I did not see Mr. Kistner make
13:32:18 12 contact with the car.

13:32:18 13 **BY MR. DAVENPORT:**

13:32:18 14 **Q.** Did Ms. McDermott tell you that she saw
13:32:21 15 the incident, the collision with Mr. Kistner in the
13:32:25 16 vehicle?

13:32:25 17 **A.** She did.

13:32:26 18 **Q.** Okay. And what did she tell you?

13:32:29 19 **A.** She told me that Mr. Kistner had -- I
13:32:32 20 can't remember if she said threw himself or put
13:32:35 21 himself into the mirror of the car.

13:32:38 22 **Q.** Okay. Did you happen to observe what
13:32:41 23 the mirror looked like on the driver's side of that

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13:32:45 1 vehicle after the collision?

13:32:46 2 A. I did.

13:32:46 3 Q. Okay. And how did it appear to you?

13:32:48 4 A. That it was dislodged from the body of
13:32:51 5 the car.

13:32:52 6 Q. Now, when you say dislodged, was it
13:32:55 7 still attached but it was partially detached from
13:32:59 8 the car?

13:32:59 9 A. Yes.

13:32:59 10 Q. Okay. So it -- it was still there on
13:33:03 11 the car, it hadn't fallen off completely, correct?

13:33:07 12 A. Correct.

13:33:07 13 Q. Okay. Was there any damage to the
13:33:09 14 glass on that mirror?

13:33:12 15 A. The glass itself was not damaged.

13:33:16 16 Q. Okay. Did you try to use or did
13:33:24 17 Ms. McDermott try to use the window on the driver's
13:33:27 18 side of that vehicle that day?

13:33:29 19 A. She did.

13:33:29 20 Q. Okay. Were you present when she tried
13:33:32 21 to use the window?

13:33:33 22 A. Yes.

13:33:33 23 Q. Okay. Did it make any sort of a

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13:33:37 1 screeching sound or anything like that?

13:33:40 2 **A.** It did, it -- it made a noise and it
13:33:42 3 like wiggled and hesitated to go up and down.

13:33:45 4 **Q.** Okay. What car were you driving that
13:33:47 5 day?

13:33:47 6 **A.** I wasn't driving that day.

13:33:49 7 **Q.** Excuse me. What car were you a
13:33:51 8 passenger in that day?

13:33:53 9 **A.** I believe it was 473.

13:33:55 10 **Q.** Okay. Did you and Ms. McDermott have a
13:33:57 11 specific vehicle that you liked to use?

13:34:00 12 **A.** She had -- she preferred 473. I
13:34:05 13 preferred 472.

13:34:06 14 **Q.** Okay. Was there any reason why car 473
13:34:11 15 was used on the day of the incident?

13:34:14 16 **A.** Availability.

13:34:14 17 **Q.** Okay. Did you use car 473 again after
13:34:18 18 January 1st of 2017?

13:34:19 19 **A.** I'm sure we did. If Officer McDermott
13:34:22 20 was driving, she -- she would drive that car.

13:34:25 21 **Q.** Okay. Do you recall when your next
13:34:27 22 shift would have been after January 1st of 2017?

13:34:29 23 **A.** I don't recall.

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13:34:31 1 **Q.** Okay. Would it have been before
13:34:36 2 January 5th of 2017?

13:34:40 3 **A.** It would have. Well, if January 1 was
13:34:44 4 our last day, the most we could have been off was
13:34:48 5 for four days, so then we would have been back.

13:34:51 6 So if -- if January 1 was our last day,
13:34:55 7 because I don't recall, we would have been -- the
13:34:55 8 most we -- the longest we could have been off was
13:34:56 9 the 2nd, 3rd, 4th, 5th.

13:35:00 10 So the earliest would have been January 6th
13:35:03 11 or 5th, if we were off for three.

13:35:06 12 **Q.** Okay. Do you know when the next time
13:35:08 13 would have been that you would use car 473?

13:35:11 14 **A.** No.

13:35:11 15 **Q.** Okay. Do you recall if the next time
13:35:13 16 that you used car 473 did it have a dislodged
13:35:17 17 mirror or were there any issues with the driver's
13:35:20 18 side window?

13:35:20 19 **A.** I don't recall.

13:35:21 20 **Q.** Okay. Do you recall ever driving the
13:35:23 21 vehicle again where it had a dislodged mirror or
13:35:27 22 issues with the driver's side window?

13:35:28 23 **A.** I don't recall driving 473 at all.

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13:35:31 1 Like I said, I would prefer to drive 472, but I
13:35:35 2 don't recall being in that vehicle in -- with an
13:35:39 3 issue.

13:35:39 4 Like I don't recall after that incident when
13:35:41 5 was the next time we had taken that vehicle. I
13:35:44 6 don't recall.

13:35:44 7 **Q.** Do you recall ever being in a police
13:35:47 8 vehicle where the driver's side mirror was
13:35:50 9 dislodged or the driver's side window had issues
13:35:53 10 with going up and down?

13:35:55 11 **MS. HUGGINS:** Form. You can answer.

13:35:57 12 **THE WITNESS:** I've driven vehicles that have
13:35:59 13 had issues with windows before.

13:36:02 14 **BY MR. DAVENPORT:**

13:36:02 15 **Q.** And what sort of issues were those?

13:36:05 16 **A.** I had one that the window wouldn't go
13:36:08 17 down before.

13:36:09 18 **Q.** But you were never in a vehicle where
13:36:13 19 the window would make noises as it was going down,
13:36:17 20 correct?

13:36:17 21 **A.** Correct.

13:36:17 22 **Q.** Okay. Do you recall what car you were
13:36:19 23 driving when the window would not go down?

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15:35:45 1 **A.** I did not ever see him enter the
15:35:48 2 street.

15:35:48 3 **Q.** Okay. Did you ever see Mr. Kistner
15:35:51 4 before he entered the street?

15:35:53 5 **A.** No.

15:35:53 6 **Q.** What were you doing at this incident?

15:35:56 7 **A.** I don't recall exactly what I was doing
15:35:59 8 at that moment.

15:35:59 9 **Q.** Okay. What -- were you looking forward
15:36:05 10 at this time?

15:36:08 11 **A.** I don't recall. I just know that I
15:36:13 12 didn't see him and I -- at all.

15:36:17 13 **Q.** Okay.

15:36:17 14 **A.** I don't recall seeing him at all.

15:36:19 15 **Q.** Okay. Did you hear Officer McDermott
15:36:22 16 say that she saw an individual out in the street?

15:36:26 17 **A.** Not that I could recall.

15:36:28 18 **Q.** Do you recall anything that was said by
15:36:32 19 Mr. Kistner to anybody while he was out in the
15:36:35 20 street?

15:36:35 21 **A.** No.

15:36:36 22 **Q.** Okay. Do you recall any of the
15:36:39 23 officers saying anything to Mr. Kistner while he

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15:36:42 1 was in the street?

15:36:43 2 **A.** No.

15:36:44 3 **Q.** Okay. Do you know, were you on your
15:36:55 4 way to go somewhere after this call prior to, you
15:36:59 5 know, the events that transpired shortly after?

15:37:03 6 **A.** Not that I could recall. After the
15:37:05 7 event?

15:37:05 8 **Q.** Well, do you recall, were you
15:37:10 9 dispatched to another location from Schmarbeck?

15:37:14 10 **A.** Well, from Schmarbeck we did go to
15:37:17 11 ECMC.

15:37:20 12 **Q.** Were you dispatched prior to any
15:37:23 13 collision between Mr. Kistner and a police vehicle?

15:37:26 14 **MS. HUGGINS:** Form. You can answer.

15:37:29 15 **THE WITNESS:** Prior to?

15:37:31 16 **BY MR. DAVENPORT:**

15:37:32 17 **Q.** Prior to -- well, after arriving at
15:37:35 18 Schmarbeck and prior to a collision that was made
15:37:38 19 with Mr. Kistner, were you and Officer McDermott
15:37:41 20 dispatched to any other location?

15:37:43 21 **A.** Not that I could recall.

15:37:44 22 **Q.** Okay. Do you know if Officer Schulz or
15:37:47 23 Officer Moriarity were dispatched to another

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15:37:50 1 situation?

15:37:50 2 **A.** I don't recall.

15:37:51 3 **Q.** Did you ever dispatch to Schmarbeck for
15:37:55 4 the 33 Schmarbeck call?

15:37:58 5 **A.** I didn't, no.

15:38:00 6 **Q.** Okay. Did Officer McDermott ever
15:38:03 7 dispatch in for the 33 Schmarbeck call?

15:38:06 8 **A.** Not that I could recall.

15:38:27 9 **Q.** Now, Ms. Velez, based on what you just
15:38:30 10 saw right there, was the police vehicle moving
15:38:33 11 after Mr. Kistner was struck?

15:38:36 12 **A.** It appeared to be so. Well, when
15:38:39 13 Mr. Kistner walked into the vehicle, it appears
15:38:41 14 from this angle of the video to slightly be moving
15:38:46 15 forward.

15:38:46 16 **Q.** Now, when you were in the police
15:38:48 17 vehicle, did you hear any sort of a noise that
15:38:52 18 indicated that a collision had been made?

15:38:53 19 **MS. HUGGINS:** Form. You can answer.

15:38:55 20 **THE WITNESS:** I did hear a noise.

15:38:57 21 **BY MR. DAVENPORT:**

15:38:57 22 **Q.** Okay. What sort of a noise was that?

15:38:59 23 **A.** It was like a -- it sounded like

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15:39:03 1 plastic, like a plastic break.

15:39:05 2 Q. Okay. At the time did you know --

15:39:09 3 A. It wasn't -- I'm sorry.

15:39:09 4 Q. No, it's okay. At the time did you
15:39:12 5 know what that was?

15:39:12 6 A. No.

15:39:13 7 Q. Okay. Did Officer McDermott say
15:39:17 8 anything after you heard that noise?

15:39:19 9 A. She did.

15:39:19 10 Q. What did she say?

15:39:21 11 A. Again, I don't recall if she said that
15:39:22 12 he had put himself into the vehicle or if he had
15:39:25 13 threw himself into the vehicle.

15:39:28 14 I don't remember which word was used, but
15:39:31 15 she stated that he had put himself into the
15:39:33 16 vehicle.

15:39:33 17 Q. Okay. Did she yell that, did she sound
15:39:37 18 excited when she said it?

15:39:39 19 A. I don't remember the exact tone.

15:39:40 20 Q. Okay. Did she say that before you
15:39:44 21 exited the vehicle?

15:39:44 22 A. Yes.

15:39:45 23 Q. Okay. At that time had you seen

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15:39:50 1 Mr. Kistner up until that point of Ms. McDermott
15:39:53 2 yelling that he either threw himself at the police
15:39:56 3 vehicle or -- I'm sorry, what was the other phrase
15:40:01 4 that she may have possibly said?

15:40:03 5 **A.** Put himself.

15:40:04 6 **Q.** Okay. So asking the question again.

15:40:07 7 At any point did you see Mr. Kistner before
15:40:10 8 Ms. McDermott said that Mr. Kistner threw himself
15:40:14 9 at the vehicle or put himself into the police
15:40:17 10 vehicle?

15:40:17 11 **A.** No.

15:40:18 12 **Q.** Okay. When was the first time that you
15:40:23 13 saw Mr. Kistner?

15:40:23 14 **A.** On the ground.

15:40:25 15 **Q.** Was he grabbing any part of his body?

15:40:29 16 **A.** No.

15:40:31 17 **Q.** Okay. Where was he positioned relative
15:40:33 18 to the car?

15:40:34 19 **A.** I recall him laying parallel to the
15:40:37 20 car.

15:40:38 21 **Q.** Okay. Was Mr. Kistner saying anything?

15:40:45 22 **A.** Not that I could recall.

15:40:47 23 **Q.** Did you say anything to Mr. Kistner?

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1 I hereby CERTIFY that I have read the
2 foregoing 347 pages, and that they are a true and
3 accurate transcript of the testimony given by me in
4 the above-entitled action on February 26, 2020.

5
6

7 -----
8 JENNY VELEZ

9 Sworn to before me this

10

11 ----- day of -----, 2020.

12

13 -----

14 NOTARY PUBLIC.

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1 | STATE OF NEW YORK)

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3 COUNTY OF ERIE)

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I DO HEREBY CERTIFY as a Notary Public in and
for the State of New York, that I did attend and
report the foregoing deposition, which was taken
down by me in a verbatim manner by means of machine
shorthand. Further, that the deposition was then
reduced to writing in my presence and under my
direction. That the deposition was taken to be
used in the foregoing entitled action. That the
said deponent, before examination, was duly sworn
to testify to the truth, the whole truth and
nothing but the truth, relative to said action.

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Lynne E. DiMarco
LYNNE E. DIMARCO,
Notary Public.

JACK W. HUNT & ASSOCIATES, INC.

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13 * Exhibits 24 - 29 retained by Mr. Davenport.

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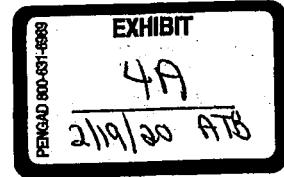
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EXHIBIT J

BUFFALO POLICE
COMPLAINT SUMMARY REPORT



Report Date: 3/14/2019

**17-0010506 CRIMINAL MISCHIEF
37 SCHMARBECK AV BUF (C3) Priority: 4**

Disposition(s): 1. P1375 Crime Report

Reported: 01/01/2017 10:54:42 Received By: 23892-AYERS, SHEILA
Received: 01/01/2017 10:55:42 Dispatched By: 000478-KESSLER, JOSEPH
Dispatched: 01/01/2017 10:57:17 Source: E-911
En Route: 01/01/2017 10:57:17
On Scene: 01/01/2017 11:30:12
Cleared: 01/01/2017 18:16:09

Officers: 1. 169325-SCHULTZ, KARL B. 2. 174122-MORIARTY, KYLE T. 3. 172768-MCDERMOTT,
LAUREN M. 4. 172870-VELEZ, JENNY M.

Other Personnel: 1. 000788-POLIZZI, SALVATORE A. JR 2. 8790-SAUER, EDWARD 3.

Remarks: 10:54:42 23892 Loc: 1250 BAILEY AVE BUFFALO Phone: 716-462-2147
Comp: Verizon Wireless

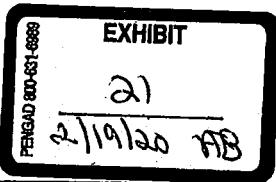
10:54:42 23892 Entry Initiated
10:55:42 23892 Sent to Dispatch - AMBULANCE - 37 SCHMARBECK AV BUF (C3) Pri: 6
10:55:42 23892 MALE HIT BY POLICE CAR...ADI NTFD
10:55:56 23892 Call Type Changed - ACCIDENT/INJURY Pri: 2
10:57:17 000478 Enroute - C230
10:57:17 000478 Dispatched (Primary) - C230
10:57:39 000478 Enroute - C241
10:57:39 000478 Dispatched - C241
10:57:41 000478 Dispatched - C242
10:57:41 000478 Enroute - C242
11:03:52 8790 Loc: 1250 BAILEY AVE BUFFALO Phone: 716-462-2147
Comp: Verizon Wireless
11:04:20 8790 ANOTHER CALL - FEMALEREQ AMB FOR INJURED 54 YO BOYFRIEND
11:04:26 8790 ADI NTFD
11:07:31 000478 cameras on 37 has video of the man flopping on the ground
11:22:34 000478 Location Changed - C230 ECMC
11:22:40 000478 Location Changed - C241 ECMC
11:22:46 000478 Location Changed - C242 ECMC
11:23:01 000478 C230 will be a 941
11:30:12 000478 On Scene - C230
11:30:35 000478 C230 suspect broke mirr on car 473 intentionally
13:14:01 000478 Set to Primary - C241
14:45:35 000788 C241 nmt
15:37:06 000788 Location Changed - C241 CB
15:37:09 000788 Location Changed - C242 CB
15:48:31 000788 On Scene - C242
15:48:35 000788 On Scene - C241
16:36:51 000788 Location Changed - C241 ECMC
16:36:55 000788 Location Changed - C242 ECMC
16:36:58 000788 Enroute - C241
16:37:00 000788 Enroute - C242
16:41:01 000788 HD01: 16:40:48 - CAN YOU PLS CHANGE THIS CALL TO CRIMINAL MISCHIEF
(Complaint 17-0010506 ACCIDENT/INJURY @ECMC)
16:41:17 000788 Call Type Changed - CHILD NEGLECT Pri: 3
16:41:22 000788 Call Type Changed - CRIMINAL MISCHIEF Pri: 4

16:46:36 000788 On Scene - C241
18:16:08 173194 Disposition Added - P1375 Crime Report
18:16:09 173194 Archived

Total Complaints:1

EXHIBIT K

	BUFFALO PD POLICE REPORT CRIMINAL MISCHIEF	<i>Complaint 17-0010506</i> <small>Report Date & Time 01/01/2017 10:54</small>				
<i>Address of Occurrence 33 SCHMARBECK AV</i>		District 'C' Tract BU Occ. Date & Time 01/01/2017 10:54 Day of Week Sunday Type of Premise Street				
Status Cleared By Arrest		Follow Up By Supl N	TT Mess# TT Entry Date TT Cancel# TT Cancel Date			
Officers: D674 - MCDERMOTT L440 - VELEZ		P2783 - SCHULTZ P3617 - MORIARITY Rep. Off.: D674 - MCDERMOTT Supervisor:				
Last Name KISTNER First Name JAMES		MI C Ext Ext	Birth Date 04/03/1960 Race White Sex M Age 56 Juvenile N Arrested N Report PR			
Address 37 SCHMARBECK		City BUFFALO	State NY Zip 14211 Home Phone (716) 895-2949 Work Phone			
Height 5'10" Weight 195 Hair GRY Eyes BLU Build S Complexion FAR		Glasses Scars/Marks/Tattoos				
<i>Victim DID receive Information on Victim's Rights and Services pursuant to New York State Law</i> Yes/No						
Last Name SONY First Name C DIST		MI C Ext Ext	Birth Date Race Unknown Sex U Age Juvenile N Arrested N Report PR			
Address 693 E FERRY ST		City BUFFALO	State NY Zip 14211 Home Phone Work Phone (716) 851-4412			
Height Weight Hair Eyes Build Complexion Glasses Scars/Marks/Tattoos						
<i>Victim DID receive Information on Victim's Rights and Services pursuant to New York State Law</i> Yes/No						
Law	Section	CA	CL	DG	Description	Report
PL	145.05-02	F	E	3	CRIMINAL MISCHIEF 3RD:DAMAGE ANOTHERS PROPERTY-AMOUNT> \$250 DIS/CON OBSCENE LANG/GESTURES	PR
PL	240.20-03	V	0			PR
Arrest # 223353 Name KISTNER, JAMES . 4/3/1960		Date 01-01-2017		Address 37 SCHMARBECK AV BUFFALO		
Status Held	Arrest Type Crime in Progress	Arresting Officers 172768 MCDERMOTT,1172870 VELEZ,JENNY M				
Law	Section	CA	CL	DG	Description	Counts
PL	145.05-02	F	E	3	CRIMINAL MISCHIEF 3RD:DAMAGE ANOTHERS PROPERTY-AMOUNT> \$250 DIS/CON OBSCENE LANG/GESTURES	1
PL	240.20-03	V	0			1
ON 1-1-17 AT APPROX 1100 HRS WHILE AT 33 SCHMARBECK THE DEF. DID INTENTIONALLY THROW HIS BODY INTO THE DRIVER'S SIDE MIRROR OF PATROL VEHICLE 473, CAUSING THE MIRROR TO BECOME DISLODGED FROM THE VEHICLE AND THE DRIVER'S SIDE WINDOW TO MALFUNCTION (AMOUNT TO EXCEED \$250). WHILE AT ECMC, DEF DID USE OBSCENE AND OFFENSIVE LANGUAGE TOWARD OFFICERS AND MEDICAL STAFF, CAUSING AN ANNOYANCE AND ALARM.						
DEF. TRANSPORTED TO ECMC FOR A 941 EVALUATION AFTER ARREST.						
EXHIBIT <div style="border: 1px solid black; padding: 5px; display: inline-block;"> S PERIOD 000-000-0000 </div>						



Agency File No. 17 00009 GE

CITY OF BUFFALO - DEPARTMENT OF POLICE CRIME AND INCIDENT RECORDS UNIT

74 FRANKLIN STREET • ROOM 100 • BUFFALO, NEW YORK • 14202

APPEARANCE TICKET

Issued to: KISTNER James 4/3/60 Male Female
 (DEFENDANT'S LAST NAME) FIRST MI D.O.B.
37 Schmarbeck Bflo 14201 PHONE
 (ADDRESS) CITY ZIP CODE Kecids

YOU ARE HEREBY DIRECTED TO APPEAR PERSONALLY IN PART TWO, OF THE
CITY COURT OF BUFFALO 50 DELAWARE AVENUE, CITY OF BUFFALO, NEW YORK.

ON JAN 12, 20 17 at 9:30 AM, in connection with your alleged commission of:
Am Akcht et al contrary to the provisions of:

145.05- 2 of the: Penal Law of the State of New York
 SECTION SUBSECTION Jan 21 17
 Vehicle and Traffic Law of the State of New York
 Ordinances of the City of Buffalo
 _____ Law.

Committed at: 37 Schmarbeck, in the City of Buffalo
 on the 1st day of JANUARY, 20 17 at 11:00 AM PM.

I, the undersigned, do hereby acknowledge receipt of this Appearance Ticket and do agree to appear as directed. I further understand that my failure to appear in City Court as directed, may result in a Criminal Summons or a Warrant for my arrest may be issued (CPL 150.60). If I have posted bail, the bail will become forfeit upon my failure to comply with the directives of this Appearance Ticket (150.30).

SIGNATURE OF DEFENDANT (SIGNATURE IS NOT AN ADMISSION OF GUILT)

ISSUED AND SUBSCRIBED BY:

OFFICER'S SIGNATURE

Lt D. PANNIER

ISSUING OFFICER (PRINT)

CCP

ASSIGNMENT

ISSUE TIME

Warrant check performed by:

MEMBER PROVIDING WARRANT CHECK

Source of Identification:

 New York State Driver's License Known to Issuing Officer Other: MUG ID

EXHIBIT L

EXHIBIT

21

2/19/20 FBB

Agency File No. 17 00009 46

**CITY OF BUFFALO - DEPARTMENT OF POLICE
CRIME AND INCIDENT RECORDS UNIT**

74 FRANKLIN STREET • ROOM 100 • BUFFALO, NEW YORK • 14202

APPEARANCE TICKET

Issued to: KISTNER James 4/3/60 Male Female
 (DEFENDANT'S LAST NAME) FIRST MI D.O.B.

37 Schmarbeck Bflo 14201 [REDACTED]
 (ADDRESS) CITY ZIP CODE PHONE

YOU ARE HEREBY DIRECTED TO APPEAR PERSONALLY IN PART TWO, OF THE
 CITY COURT OF BUFFALO 50 DELAWARE AVENUE, CITY OF BUFFALO, NEW YORK.

ON JAN 12, 20 17 at 9:30 AM, in connection with your alleged commission of:
Cam Rkcht et al contrary to the provisions of:

145.05- 2 of the: Penal Law of the State of New York

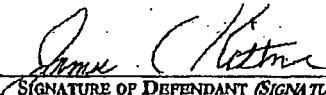
Jan 12 2017 Vehicle and Traffic Law of the State of New York

Ordinances of the City of Buffalo

_____ Law.

Committed at: 37 Schmarbeck, in the City of Buffalo
 on the 1st day of JANUARY, 20 17 at 1600 AM PM.

I, the undersigned, do hereby acknowledge receipt of this Appearance Ticket and do agree to appear as directed. I further understand that my failure to appear in City Court as directed, may result in a Criminal Summons or a Warrant for my arrest may be issued (CPL 150.60). If I have posted bail, the bail will become forfeit upon my failure to comply with the directives of this Appearance Ticket (150.30).


 SIGNATURE OF DEFENDANT (SIGNATURE IS NOT AN ADMISSION OF GUILT)

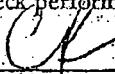
ISSUED AND SUBSCRIBED BY:


 OFFICER'S SIGNATURE

Lt D. PANNIER
 ISSUING OFFICER (PRINT)

CPC
 ASSIGNMENT

Warrant check performed by:


 MEMBER PROVIDING WARRANT CHECK

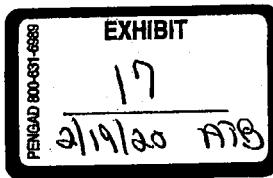
Source of Identification:

New York State Driver's License

Known to Issuing Officer

Other: MUG ID

EXHIBIT M



00023

Docket Number

CD #: 17-0010506

CITY OF BUFFALO

COUNTY OF ERIE STATE OF NEW YORK

The People of the State of New York)
vs.)
JAMES KISTNER DOB: 04/03/1960) INFORMATION / COMPLAINT
37 SCHMARBECK)
BUFFALO, NY)

I, Police Officer LAUREN M. McDERMOTT, a police officer herein, accuse JAMES KISTNER, the DEFENDANT of this action, and charge that on or about Sunday, January 1, 2017 at 33 SCHMARBECK AV in the CITY OF BUFFALO, County of ERIE, at about 10:54 AM, said DEFENDANT did commit the offense of:

CRIMINAL MISCHIEF 3RD - DAMAGE >\$250.

a class E FELONY contrary to the provisions of section 145.05, subsection(s) 02 of the Penal Law of the State of New York.

145.05-2 - CRIMINAL MISCHIEF IN THE THIRD DEGREE
IN THAT THE DEFENDANT, WHILE AT 37 SCHMARBECK, DID WITH INTENT TO DAMAGE THE PROPERTY OF ANOTHER PERSON, CITY OF BUFFALO POLICE DEPARTMENT, AND HAVING NO RIGHT TO DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE HAD SUCH RIGHT, DID DAMAGE THE PROPERTY, TO WIT; DRIVER'S SIDE MIRROR AND DRIVER'S SIDE MIRROR OF PATROL VEHICLE, IN THE AMOUNT OF MORE THAN \$250.00. IN THAT THE DEFENDANT DID INTENTIONALLY THROW HIS BODY INTO THE DRIVER'S SIDE MIRROR OF PATROL VEHICLE #473, CAUSING THE MIRROR TO BECOME DISLODGED FROM THE VEHICLE AND ALSO CAUSING THE DRIVER'S SIDE WINDOW TO MALFUNCTION, THE VALUE OF SAID DAMAGE TO EXCEED \$250.00. THE DEFENDANT DID CAUSE SAID DAMAGE TO THE ABOVE MENTIONED PROPERTY WITHOUT THE PERMISSION OF THE OWNER.

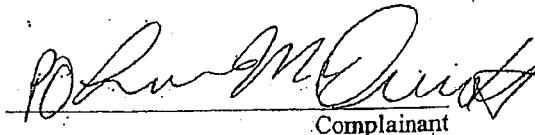
ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law.

NOTICE

(Penal Law, Section 210.45)

It is a crime, punishable as a Class A Misdemeanor under the Laws of the State of New York, for a person, in a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.



Complainant

Subscribed and sworn to me this
1st of January, 2017

Docket Number _____

**CITY OF BUFFALO
COUNTY OF ERIE STATE OF NEW YORK**

CD #:17-0010506

The People of the State of New York)
vs.)
JAMES KISTNER DÖB: 04/03/1960) INFORMATION / COMPLAINT
37 SCHMARBECK)
BUFFALO, NY)

I, Police Officer LAUREN M. McDERMOTT, a police officer herein, accuse JAMES KISTNER, the DEFENDANT of this action, and charge that on or about Sunday, January 1, 2017 at 33 SCHMARBECK AV in the CITY OF BUFFALO, County of ERIE, at about 10:54 AM, said DEFENDANT did commit the offense of:

DISORDERLY CONDUCT

a VIOLATION contrary to the provisions of section 240.20, subsection(s) 03 of the Penal Law of the State of New York.

THE SAID DEFENDANT, AT THE AFORESAID TIME AND PLACE, WITH INTENT TO CAUSE PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM, OR RECKLESSLY CREATING A RISK THEREOF, WHILE IN A PUBLIC PLACE, DID USE ABUSIVE OR OBSCENE LANGUAGE, OR MADE AN OBSCENE GESTURE. IN THAT THE DEFENDANT DID INTENTIONALLY THROW HIS BODY INTO THE DRIVER'S SIDE MIRROR OF PATROL VEHICLE #473, CAUSING THE MIRROR TO BECOME DISLODGED FROM THE VEHICLE AND ALSO CAUSING THE DRIVER'S SIDE WINDOW TO MALFUNCTION, THE VALUE OF SAID DAMAGE TO EXCEED \$250.00 AND WHILE AT BEING TREATED AT ECMC THE DEFENDANT DID USE OBSCENE AND OFFENSIVE LANGUAGE TOWARD OFFICERS AND MEDICAL STAFF. SAID ACTIONS BY THE DEFENDANT DID CAUSE A PUBLIC ANNOYANCE AND ALARM.

ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law:

NOTICE

(Penal Law, Section 210.45)

It is a crime, punishable as a Class A Misdemeanor under the Laws of the State of New York, for a person, in a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.


Complainant

Subscribed and sworn to me this
1st of January, 2017

EXHIBIT N

REQUEST FOR EXAMINATION OF PERSON UNDER SECTION 9.41 OF THE NEW YORK MENTAL HYGIENE LAW

To: Erie County Medical Center – CPEP
462 Grider St., Buffalo, NY 14215

POLICE AGENCY/DISTRICT: Buffalo PD

To: Lakeshore Health Care Center
845 Routes 5 & 20, Irving, NY 14071

COMPLAINT #: 17-001-0506

Is responding officer CIT-trained? Yes

INCIDENT LOCATION: 33 Schmarbeck

Does individual have active CIT-Crisis Plan? Yes

DATE: 1-1-17 TIME OF TRANSPORT: 1637

AMB CO: AMB #: _____

Name (L, F, MI)

Kistner, James

DOB

4-3-60

Age

56

Sex

M

Address (number, street, city, state, zip)

37 Schmarbeck Buffalo, NY

Has this individual served in the military/reserves: Yes No Unknown

EXHIBIT

Known mental health history and/or diagnosis: UNKNOWN

6

What was reported to the police about this individual?

all 3/20 11:30 AM

Name of source of information: Relationship to individual: Phone:

Any known linkages to treatment/significant others: UNKNOWN

Justification for transport - Describe any known history of violence to self or others, current violent behavior, and harmful or neglectful behavior to self or others, including documentation of any plans, means, and access for suicide/harm to others: Sub. did not know himself at patrol vehicle. Reportedly called me the N-word and f***ed

- behaviors or actions indicate that the individual might be a danger to self/others?
- Faces self in dangerous situations
 - Talk of hurting/killing self others
 - Unable to care for self
 - Attempting to hurt/kill self others
 - Threat/use of weapon to harm self/others
 - Plan/means/access available
 - Verbal threats
 - Physical threats
 - Other: _____
 - Weapon(s) present (describe): _____

Check here if a continuation page is attached

WEAPONS CHECK PRIOR TO TRANSPORT

Searched? Yes NoFound? Yes No

If found, disposition: _____

Check observed and/or reported behavior or actions that indicate that the individual might be a danger to self or others:

- | | |
|---------------------------------------|--|
| <input checked="" type="checkbox"/> R | Verbal and Behavioral |
| <input type="checkbox"/> | Refusal to respond to question |
| <input checked="" type="checkbox"/> | Talking to self |
| <input type="checkbox"/> | Impaired speech (slurred, slow, illogical/incoherent, fast) |
| <input type="checkbox"/> | Reported hearing voices |
| <input type="checkbox"/> | Irrational speech/thoughts |
| <input checked="" type="checkbox"/> | Hostile/argumentative/belligerent/loud/yelling |
| <input checked="" type="checkbox"/> | Expresses ideas of inflated self-importance |
| <input checked="" type="checkbox"/> | Talks repeatedly about a single subject (death, religion, illness, government, etc.) |

- | | |
|---------------------------------------|--|
| <input checked="" type="checkbox"/> R | Appearance and Behavior |
| <input type="checkbox"/> | Paranoia/suspiciousness/feelings of persecution |
| <input type="checkbox"/> | Dress indicates lack of awareness of weather/setting |
| <input type="checkbox"/> | Confused/disoriented |
| <input type="checkbox"/> | Sad expression /crying/depression |
| <input type="checkbox"/> | Presence of feces or urine |
| <input type="checkbox"/> | Exhibits extraordinary physical strength |
| <input type="checkbox"/> | Extremely rapid heart rate/respiration |
| <input type="checkbox"/> | Poor hygiene/living environment |
| <input type="checkbox"/> | Under the influence |
| <input type="checkbox"/> | Hyperactivity/psychomotor agitation |

Has a criminal charge been placed? Yes No

If yes, charges: PL 145.05-2 PL 240-20-3

Appeal/ticket issued? Yes NoOrder of protection in force? Yes No

Officer's Name (please print): V. L.

Date: 1-1-17

HOSPITAL DISPOSITION: To be completed by Examining Physician/Emergency Room (check appropriate boxes)

- Patient admitted to this facility
- Medical admission
- Psychiatric admission
- Patient transferred to another facility
- Patient not admitted
- Patient absconded

Staff Signature:

EXHIBIT O

Certificate #: U-000004751-F

Page 1 of 1

**BUFFALO CITY COURT**

50 Delaware Avenue, Buffalo, NY 14202

Phone: (716) 845-2689 Fax: (716) 847-8257

FEE
 Non-Public
 Version

The People of the State of New York
 vs.
James Kistner

Certificate of DispositionDocket Number: **CR-00122-17**Defendant DOB: **04/03/1960**Arrest Date: **01/01/2017**Arraignment Date: **01/12/2017**

THIS IS TO CERTIFY that the undersigned has examined the files of the **Buffalo City Court** concerning the above entitled matter and finds the following:

Count	Arraignment Charge	Charge Weight	Disposition	Disposition Date
1	PL 240.20 03 V Dis/Con:Obscene Lang/Gestures	V	Dismissed (Interest/Furtherance of Justice (CPL 170.30 (1)(g)), Do Not Seal)	04/04/2017
2	PL 145.05 02 EF Crim Mischief 3:Property> \$250 **SEALED 160.50**	EF	Reduced to (Count #3)	02/01/2017
3	PL 145.00 01 AM Crim Mis:Intent Damage Proprty **SEALED 160.50**	AM	Dismissed (Interest/Furtherance of Justice (CPL 170.30 (1)(g)), Sealed 160.50)	04/04/2017

Dated: April 2, 2018

Chief Clerk/Clerk of the Court

CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT SEAL

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. [Executive Law § 296 (16)]

Arraignment charges may not be the same as the original arrest charges.

CPL 160.50: All official records (excluding published court decisions or opinions or records and briefs on appeal) related to the arrest or prosecution on file with the Division of Criminal Justice Services, any court, police agency or prosecutor's office shall not be available to any person or public or private agency.